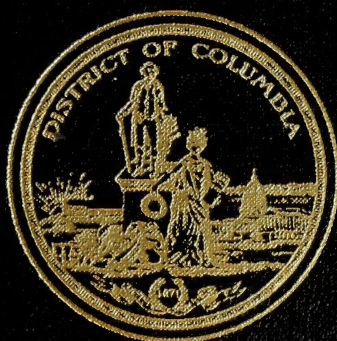


DISTRICT OF COLUMBIA OFFICIAL CODE

2001 Edition

TITLE 1

Government Organization
(Chapters 1 to 6)



40th ANNIVERSARY
of
HOME RULE



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DISTRICT OF COLUMBIA

OFFICIAL CODE

2001 EDITION

Containing the Laws, general and permanent in their nature,
relating to or in force in the District of Columbia (Except such
laws as are of application in the General and Permanent
Laws of the United States) as of September 13, 2012.

VOLUME 2

Title 1

**Government Organization
Chapters 1 to 6**



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VOLUME 2
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LexisNexis

June 2013

Foreword to 2013 Commemorative Set

LexisNexis presents the 2013 republication of the District of Columbia Official Code, 2001 Edition to the D.C. bench and bar and to the citizens of the District of Columbia in a sincere belief that it will prove a material contribution to the orderly and efficient conduct of the government of the District and to the practice of law. LexisNexis is proud to help commemorate the 40th anniversary of Home Rule for the District of Columbia.

LexisNexis continues its tradition of excellence with its District of Columbia Official Code, 2001 Edition. This 2013 Volume 2 replaces any existing Volume 2 of the 2001 Edition and its 2012 Supplement, both of which may now be discarded, recycled, or retained for historical reference. Future supplements will be keyed to this 2013 Volume and not to any of its predecessors.

The District of Columbia Official Code, 2001 Edition, represents the eighth compilation of the laws of the District of Columbia and reflects an extensive renumbering of the 1981 Edition. Users should consult the historical citations at the end of each statute, and corresponding amendment notes, as guides to legislative currency. Research features such as case annotations, section references, effect of legislation notes, editor's notes, and the comprehensive index have been prepared by LexisNexis. Your set is kept up to date through regular supplementation, free access to the on-line Official Code at <http://www.lexisnexis.com/hottopics/dccode> and the periodic replacement of volumes. All case citations are Shepardized for accuracy and continued relevance. LexisNexis also publishes a District of Columbia Advance Legislative Service (ALS). The ALS gives you the latest session laws as they are passed, along with tables showing you which sections of the Code are affected.

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LEXISNEXIS

June 2013

PREFACE TO THE 2001 EDITION

The 2001 Edition of the District of Columbia Official Code marks the eighth time that a compilation of the laws of the District of Columbia has been published by, or under the authority of, the government of the District of Columbia or that of the United States. The District of Columbia Code was first published in 1929; eleven years later, the Second Edition (1940) was published; another eleven years later, the Third Edition (1951); ten years later, the Fourth Edition (1961); six years later, the Fifth Edition (1967); another six years later, the Sixth Edition (1973); and 8 years later, the Seventh Edition (1981) was published. The time between the publication of the Seventh Edition and this Eighth Edition represents the longest period, by almost a decade, that the District of Columbia Code has gone unrevised in its 72 year history.

The District's Charter, which in 1973, established the current tripartite government of the District of Columbia, makes it incumbent upon the legislative branch to publish and codify every act of the Council, as the Council directs, upon becoming law, so that the residents of the District may have ready access to the laws by which they are governed. In 1973, however, the framers of the District's constitution could not have foreseen the incredible technological advances that would occur in the next 25 years nor the impact they have on the Code.

With the close of the 20th Century the world has witnessed the triumph of the Information Age, the rise of the World Wide Web, and the explosion of word processing and data storage technology. These phenomena have helped make the reproduction of legal text and data a fast, easy, and inexpensive enterprise, giving rise to a plethora of publishing mediums, and have made it a relatively simple task to reproduce existing legal text, including the District of Columbia Code. The rapid rise of the Computer Age has allowed virtually anyone with an ordinary personal computer to reproduce and compile the laws of the District of Columbia.

The laws of the District, however, are fluid, not stagnant, as they are amended several times each year. The quality and accuracy of publications not directed by the Council are beyond its control. The Council can only warrant the Code for which it has authorized publication. Therefore, in order to ensure that the residents of the District may distinguish between the compilation of District laws as produced under the direction of the elected officials of the District of Columbia and those of other persons, we have added the word "Official" to the title of the Code. Also to ensure that the Council never loses the right to publish its own laws, the government of the District of Columbia has retained the copyright to the District of Columbia Official Code.

The codified laws of the District of Columbia are created as a result of legislative action on the part of 13 individuals elected by the residents of the

District of Columbia to enact the laws that govern the District, and by the Congress. Once the legislative process is complete, the Council, through its delegation of authority to its Office of the General Counsel, codifies the laws in the form of this Code. In the process of codification, the Office of the General Counsel interprets any discrepancies in the drafting of the laws using commonly recognized rules of statutory construction. No other entity is authorized by law to make these determinations. As set forth by federal law and recognized by the Courts of the District of Columbia, this Code establishes prima facie evidence of the laws in force in the District of Columbia.¹ It is this continuity of authority, from enactment to codification to judicial review that gives this Code its authenticity and officiality as the content of the laws of the District of Columbia.

The 2001 Edition represents a recodification of the 1981 Edition in that it contains a reorganization of the presentation of the laws, inclusion of some previously omitted legal provisions, and the omission of non-substantive extraneous provisions. The theory behind the recodification is to purify the organization of the Code which over many decades has seen the haphazard mixing of original (“organic”) provisions of laws throughout the Code. In the 2001 Edition, we have established a system of codification that follows the legislative drafting principals established over many years in the Council’s Office of the General Counsel.

The recodification is not an overhaul of the Code. Although a cleanup of the antiquated, repealed and omitted provisions is long overdue, it is not the province of the Office of the General Counsel to determine which laws should be expunged as obsolete. Such decisions should be left to a working group commissioned by the Council to recommend revisions to the Code. The Office of the General Counsel has simply separated the organic laws into discrete divisions and topical categories. As much as is possible, we have followed a rule that requires that all organic law remain intact: closely following the layout of the originating act. We have retained notes to repealed sections to aid in legal research and preserved the numbering style that was first introduced in the Second Edition. Thanks to the resourcefulness of the publisher and the Council’s Office of the General Counsel staff, we have corrected provisions of law erroneously added to, or deleted from, prior editions.

The Code is organized into eight Divisions of practical law: government organization; judicial organization; decedent estates; criminal law; business law; education; property; and general laws. Each division is subdivided by subject matter called **Titles**, organic laws, called **Chapters** and **Subchapters**, and finally, individual **Sections** representing the individual sections of organic law. Occasionally, **Subtitles** are used to organize chapters of organic law, **Units** to organize subchapters, and **Parts** and **Subparts** to organize the additional divisions within the organic law. One important change that the user will notice, and hopefully appreciate, is that the District’s Charter, the Home Rule Act, is codified in its entirety in one location so that the

1. See 1 U.S.C. § 204(b) (1994); *Sheetz v. District of Columbia*, 629 A.2d 515, 519 (D.C. 1993).

framework of the current District government can be readily found. We hope that the organization of the 2001 Edition of the District of Columbia Official Code will serve as a foundation for further refinement by future law revision commissions or their equivalent.

The 2001 Edition has been prepared under the supervision of Benjamin. F. Bryant, Jr., Codification Counsel, Office of the General Counsel, Council of the District of Columbia.

_____/s/_____

Linda W. Cropp

Chairman

Council of the District of Columbia

_____/s/_____

Charlotte Brookins-Hudson

General Counsel

Council of the District of Columbia

USER'S GUIDE

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the District of Columbia Official Code, a User's Guide has been included in Volume 1 of the Code. This guide contains comments and information on the many features found within the District of Columbia Official Code intended to increase the usefulness of the Code to the user.

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*Title has been enacted as law.

Title

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*Title has been enacted as law.

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Subchapter I. District of Columbia Establishment.

§ 1-101. Territorial area.

The District of Columbia is that portion of the territory of the United States ceded by the State of Maryland for the permanent seat of government of the United States, including the river Potomac in its course through the District, and the islands therein.

(R.S., D.C., § 1; June 11, 1878, 20 Stat. 102, ch. 180, § 1.)

Cross references. — "District" defined, see § 2-2601.
Metropolitan Police District, creation, see § 5-101.01.

National capital service area, see § 1-207.39.

Prior Codifications. — 1981 Ed., § 1-101.
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Editor's notes. — Organic Act of 1878: See

Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1.

Boundary line between District of Columbia and Commonwealth of Virginia established: See Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1.

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ANALYSIS

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Applicability of local law.

The entire part of the Potomac river between the District of Columbia and the Virginia shores is a part of the district, and as such is

subject to all local legislation and police regulations of the district, unless there is a clear intent to exclude it therefrom. *Jefferson v. District of Columbia*, 40 App.D.C. 381, 1913 U.S. App. LEXIS 2087 (1913).

The fact that a boat or vessel is engaged in interstate commerce does not prevent the application to it of the laws of the District of Columbia regulating the sale of intoxicating liquors, and it is immaterial whether there is any provision of law for the granting of licenses to sell such liquors on that portion of the

Potomac river which is within the limits of the district. *Jefferson v. District of Columbia*, 40 App.D.C. 381, 1913 U.S. App. LEXIS 2087 (1913).

Statutes regulating the sale of intoxicating liquors in the District of Columbia, extend to that part of the Potomac river which is within the territorial limits of the district. *Jefferson v. District of Columbia*, 40 App.D.C. 381, 1913 U.S. App. LEXIS 2087 (1913).

Boundaries.

The arbitration of the question of boundary between Maryland and Virginia ending in an award in 1878, though assented to by the United States by Act March 3, 1879 (20 Stat. 481), is not conclusive as to the boundary between Virginia and the District of Columbia, as that question was not and could not be adjudicated. *Marine Ry. & Coal Co. v. U.S.*, 42 S.Ct. 32, 1921 U.S. LEXIS 1313 (U.S. Dist. Col. 1921).

Under the Maryland Charter of 1632 and the Howsing grant of 1669 from the Governor of Virginia, the boundary between Virginia and the District of Columbia follows the low-water line on the Virginia side of the Potomac river, and is not drawn from headland to headland, so as to leave indentations or coves in Virginia. *Marine Ry. & Coal Co. v. U.S.*, 42 S.Ct. 32, 1921 U.S. LEXIS 1313 (U.S. Dist. Col. 1921).

The compact of 1785 between Virginia and Maryland, providing that the Potomac river should be considered a common highway for citizens of both states, and that citizens of each state should have full property in the shores, the privilege of carrying out wharves, etc., if ever in force in the District of Columbia, left the question of boundary open. *Marine Ry. & Coal Co. v. U.S.*, 42 S.Ct. 32, 1921 U.S. LEXIS 1313 (U.S. Dist. Col. 1921).

The boundary line between the District of Columbia and Virginia is the high-water mark of the Potomac river on the Virginia shore. *Herald v. U.S.*, 284 F. 927, 1922 U.S. App. LEXIS 2485 (1922).

The boundary of the District of Columbia, as originally fixed, was not affected by the litigation between Maryland and West Virginia. *Herald v. U.S.*, 284 F. 927, 1922 U.S. App. LEXIS 2485 (1922).

This court will take cognizance of the fact that the county of Washington embraces all that portion of the original District of Columbia acquired from the state of Maryland and lying north of the Potomac river. *Green v. McIntire*, 42 App.D.C. 250, 1914 U.S. App. LEXIS 2266 (1914).

Jurisdiction.

For purpose of section of 1912 Act directing the Attorney General of the United States to institute suit in the Supreme Court of the District of Columbia to establish title of United

States to submerged and fast lands along the Potomac River within the boundaries of the district as it then existed, fact that no one could precisely locate the 1791 line did not mean that the district court for the District of Columbia did not have subject matter jurisdiction to adjudicate title to lands along the Alexandria waterfront. Act April 27, 1912, § 1 et seq., 37 Stat. 93. *United States v. Herbert Bryant, Inc.*, 543 F.2d 299, 1976 U.S. App. LEXIS 8171 (C.A.D.C. 1976), writ of certiorari denied by 429 U.S. 1091, 97 S. Ct. 1100, 51 L. Ed. 2d 536, 1977 U.S. LEXIS 652 (1977).

The common-law doctrines of accretion and erosion were legislatively overruled by the Acts of 1912 and 1945 insofar as concerns jurisdiction of the United States District Court for the District of Columbia to adjudicate title to lands lying along the Alexandria waterfront. Act April 27, 1912, § 1 et seq., 37 Stat. 93; Act October 31, 1945, §§ 101-103, D.C. Code § 1-101 note. *United States v. Herbert Bryant, Inc.*, 543 F.2d 299, 1976 U.S. App. LEXIS 8171 (C.A.D.C. 1976), writ of certiorari denied by 429 U.S. 1091, 97 S. Ct. 1100, 51 L. Ed. 2d 536, 1977 U.S. LEXIS 652 (1977).

Sections of 1945 Act establishing new boundary between the District of Columbia and Virginia for law enforcement purposes and ceding to Virginia sovereignty and concurrent jurisdiction with the United States over area between 1791 high watermark and the newly established pierhead line did not establish a jurisdictional boundary between the District of Columbia and Virginia for all purposes, and by virtue of section providing that nothing in the Act was to be construed as limiting jurisdiction of courts of United States for the District of Columbia to hear and determine suits to establish title of United States, United States district court for the District of Columbia had jurisdiction to adjudicate title to lands along the Alexandria waterfront. Act October 31, 1945, §§ 101-103, D.C. Code § 1-101 note. *United States v. Herbert Bryant, Inc.*, 543 F.2d 299, 1976 U.S. App. LEXIS 8171 (C.A.D.C. 1976), writ of certiorari denied by 429 U.S. 1091, 97 S. Ct. 1100, 51 L. Ed. 2d 536, 1977 U.S. LEXIS 652 (1977).

So long as there is a genuine dispute over title or location of present-day boundaries between the District of Columbia and Virginia, the district court for the District of Columbia has, by virtue of the 1912 Act directing the attorney general of the United States to institute suits in the Supreme Court of the District of Columbia to establish title of United States to submerged and fast lands along the Potomac River within the boundaries of the District of Columbia as it then existed, exclusive subject matter jurisdiction over government-initiated quiet title actions involving Alexandria waterfront property. Act April 27, 1912, § 1 et seq., 37 Stat. 93. *United States v. Herbert Bryant*,

Inc., 543 F.2d 299, 1976 U.S. App. LEXIS 8171 (C.A.D.C. 1976), writ of certiorari denied by 429 U.S. 1091, 97 S. Ct. 1100, 51 L. Ed. 2d 536, 1977 U.S. LEXIS 652 (1977).

Operation and effect of cessions.

Under the Maryland Charter of June 30, 1632, the Virginia Charter, and the Howsling grant of 1669 from the Governor of Virginia, the original title of the state of Maryland extended to low-water mark on the Virginia side of the Potomac river, and the rights of Virginia were not enlarged by its grant to the United States and the regrant to it of the Virginia side of the District of Columbia. *Marine Ry. & Coal Co. v. U.S.*, 42 S.Ct. 32, 1921 U.S. LEXIS 1313 (U.S. Dist. Col. 1921).

The compact between Maryland and Virginia, entered into in 1785, concerning the right of citizens of Virginia to fish in the Potomac river, was abrogated by the cession of that portion of the District of Columbia originally granted by the state of Virginia and by its recession by the United States. *Herald v. U.S.*, 284 F. 927, 1922 U.S. App. LEXIS 2485 (1922).

Riparian and littoral rights.

That the filling in of land below low-water mark on the Virginia side of the Potomac river by the government interrupts the adjoining owner's previously existing access to the water front does not affect the government's right to the possession of the land, whatever rights the adjoining owners may have. *Marine Ry. & Coal Co. v. U.S.*, 42 S.Ct. 32, 1921 U.S. LEXIS 1313 (U.S. Dist. Col. 1921).

Washington National Airport.

In consolidated actions arising out of airplane crash in Washington, D.C., federal subject-matter jurisdiction arose from parties' diversity of citizenship and, therefore, district court was required to follow choice of law rules of states in which various actions were originally filed. 28 U.S.C. § 1404(a). In re Air Crash Disaster at Washington, 559 F. Supp. 333, 1983 U.S. Dist. LEXIS 18834 (1982).

In determining which jurisdiction's law applied to allegations of product liability against airplane manufacturer arising out of airplane crash in District of Columbia, contacts to be considered included site of injury, place where conduct occurred, parties' domiciles and place where parties' relationship was centered. In re Air Crash Disaster at Washington, 559 F. Supp. 333, 1983 U.S. Dist. LEXIS 18834 (1982).

In consolidated actions arising out of airplane crash in Washington, D.C., comparative fault rule of Florida, Texas and Washington, which were principal places of business of airline, airline which performed deicing of airplane's wings and manufacturer, would be applied rather than District of Columbia's or Virginia's equal fault rule to serve purpose of

ensuring that parties act in conformance with standard of due care. Fla. Stat. § 768.31(3)(a); Rev. Code Wash. (ARCW) 4.22.040(1); Tex. Civ. Prac. & Rem. Code art. 2212a, § 2. In re Air Crash Disaster at Washington, 559 F. Supp. 333, 1983 U.S. Dist. LEXIS 18834 (1982).

Where highest court of Virginia recently reaffirmed its adherence to *lex loci delicti* rule, District of Columbia law governed all issues in action transferred from Virginia to District of Columbia when actions arising out of airplane crash in Washington, D.C., were consolidated. In re Air Crash Disaster at Washington, 559 F. Supp. 333, 1983 U.S. Dist. LEXIS 18834 (1982).

In consolidated actions arising out of airplane crash in Washington, D.C., Georgia's comparative fault rule for contribution among tort-feasors was applicable to those claims transferred from Georgia to District of Columbia; but all other issues were to be determined by law of District of Columbia. Ga. Code, § 105-2011. In re Air Crash Disaster at Washington, 559 F. Supp. 333, 1983 U.S. Dist. LEXIS 18834 (1982).

In consolidated actions arising out of airplane crash in Washington, D.C., District of Columbia law governed allegations of products liability against airplane manufacturer in that interest of Washington State as manufacturer's principal place of business with regard to question of manufacturer's alleged products liability was not as great as interest of District of Columbia. In re Air Crash Disaster at Washington, 559 F. Supp. 333, 1983 U.S. Dist. LEXIS 18834 (1982).

In consolidated actions arising out of airplane crash in Washington, D.C., Pennsylvania law permitting award of punitive damages would not be applied to that action which had been transferred from Pennsylvania to District of Columbia because Pennsylvania would not be interested in imposition of punitive damages in case involving out-of-state air crash. In re Air Crash Disaster at Washington, 559 F. Supp. 333, 1983 U.S. Dist. LEXIS 18834 (1982).

In consolidated actions arising out of airplane crash in Washington, D.C., Massachusetts law governing punitive damages which provides for mandatory minimum of \$5,000 assessment of punitive damages where defendant is found to have acted maliciously, willfully, wantonly or recklessly, or to have been grossly negligent, would not be given extraterritorial effect to apply to claims of Massachusetts plaintiffs. M.G.L.A. c. 229, § 2. In re Air Crash Disaster at Washington, 559 F. Supp. 333, 1983 U.S. Dist. LEXIS 18834 (1982).

In consolidated actions arising out of airplane crash in Washington, D.C., punitive damages law of state in which airline had principal place of business and state in which airline which performed deicing of airplane's wings had its principal place of business would not be

applied in that allegedly tortious conduct occurred in neither of those states and states in which conduct occurred had greater interest in deterring conduct. In re Air Crash Disaster at Washington, 559 F. Supp. 333, 1983 U.S. Dist. LEXIS 18834 (1982).

In consolidated actions arising out of airplane crash in Washington, D.C., District of Columbia law controlled question of liability of airline and of airline which deiced airplane's wings for punitive damages, even though airport was located in Virginia. In re Air Crash Disaster at Washington, 559 F. Supp. 333, 1983 U.S. Dist. LEXIS 18834 (1982).

Law of District of Columbia permitting assessment of punitive damages was applicable to allegations of product liability against manufacturer of airplane which crashed on takeoff in Washington, D.C., even though Washington State made a considered choice not to allow assessment of punitive damages, given District of Columbia's significant interests and fact that manufacturer had more substantial relationship with District of Columbia than manufacturer generally has to site of injury in typical "fortuitous crash" cases. In re Air Crash Disaster at Washington, 559 F. Supp. 333, 1983 U.S. Dist. LEXIS 18834 (1982).

Fact that mailing address of airport, which was base of operations of unemployment com-

pensation claimant, was Washington, D.C., did not make the airport within confines of the District so as to give the District Unemployment Compensation Board jurisdiction over the claim. D.C. Code §§ 1-101, 46-301(b)(4). Bryan v. District Unemployment Compensation Board, 342 A.2d 45, 1975 D.C. App. LEXIS 421 (1975).

That jurisdiction over airport, situated within boundaries of Virginia, was in the United States did not give the District of Columbia Unemployment Compensation Board jurisdiction over pilot's unemployment compensation claim on theory that the airport was a federal reservation adjacent to the District of Columbia and thus not within the Commonwealth of Virginia. D.C. Code §§ 1-101, 46-301(b)(4). Bryan v. District Unemployment Compensation Board, 342 A.2d 45, 1975 D.C. App. LEXIS 421 (1975).

Washington National Airport was within boundaries of Commonwealth of Virginia and not within those of District of Columbia; thus employer of pilot, whose base of operations was the airport, correctly reported pilot's wages to Virginia for unemployment compensation purposes and pilot was not entitled to unemployment benefits from the District of Columbia. D.C. Code §§ 1-101, 46-301(b)(4). Bryan v. District Unemployment Compensation Board, 342 A.2d 45, 1975 D.C. App. LEXIS 421 (1975).

§ 1-102. District created body corporate for municipal purposes.

The District is created a government by the name of the "District of Columbia," by which name it is constituted a body corporate for municipal purposes, and may contract and be contracted with, sue and be sued, plead and be impleaded, have a seal, and exercise all other powers of a municipal corporation not inconsistent with the Constitution and laws of the United States and the provisions of this Code.

(R.S., D.C., § 2; June 11, 1878, 20 Stat. 102, ch. 180, § 1.)

Cross references. — "District" defined, see §§ 1-603.01 and 3-3601.

Mayor, powers and duties, see § 1-204.22.

Prior Codifications. — 1981 Ed., § 1-102. 1973 Ed., § 1-102.

Editor's notes. — Organic Act of 1878: See Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of

Reorganization Plan No. 3 of 1967 transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

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Damages.

District of Columbia, as municipal corporation, is immune from punitive damages under §§ 1983. *Butera v. District of Columbia*, 235 F.3d 637, 2001 U.S. App. LEXIS 216 (C.A.D.C. 2001).

Under District of Columbia law, punitive damages may be awarded against District only upon showing of extraordinary circumstances. *Feirson v. Dist. of Columbia*, 315 F.Supp.2d 52, 2004 U.S. Dist. LEXIS 5264 (2004), affirmed by 2007 U.S. Dist. LEXIS 25356 (W.D. Okla. Apr. 4, 2007).

District of Columbia was not subject to punitive damages under §§ 1983. *Feirson v. Dist. of Columbia*, 315 F.Supp.2d 52, 2004 U.S. Dist. LEXIS 5264 (2004), affirmed by 2007 U.S. Dist. LEXIS 25356 (W.D. Okla. Apr. 4, 2007).

Defenses, generally.

Any defenses available to individual police officers of District of Columbia in suit for assault, battery, false arrest or imprisonment are also available to District if it is party to suit. *Wade v. District of Columbia*, 310 A.2d 857, 1973 D.C. App. LEXIS 374 (1973).

Due process.

While District of Columbia is not a state, it is subject to Due Process Clause of Fifth Amend-

ment. *Butera v. District of Columbia*, 235 F.3d 637, 2001 U.S. App. LEXIS 216 (C.A.D.C. 2001).

Equal protection.

The privilege of equal protection of the laws, to the extent that it exists in the District of Columbia, depends upon the due process clause and other constitutional provisions applicable to the federal government. U.S. Const. art. 1, § 8, cl. 17; Amends. 5, 14. *Neild v. District of Columbia*, 110 F.2d 246, 1940 U.S. App. LEXIS 4514 (1940).

Congress' prohibition against commuter tax on nonresidents working in District Of Columbia had a rational basis and therefore did not violate Equal Protection Clause; it was rational to conclude that the prohibition was an attempt to ensure that all of the nation's taxpayers make a fair financial contribution to the nation's capital through federal appropriations, rather than disproportionately burdening the states that surrounded the District for its support. *Banner v. United States*, 303 F.Supp.2d 1, 2004 U.S. Dist. LEXIS 3828 (2004), affirmed by 428 F.3d 303, 368 U.S. App. D.C. 224, 2005 U.S. App. LEXIS 23828 (2005).

Heightened level of scrutiny was not applicable to equal protection challenge to Congress' prohibition against commuter tax on nonresidents working in District Of Columbia; District residents did not establish the infringement of a fundamental interest, and District residents did not constitute a suspect class. *Banner v. United States*, 303 F.Supp.2d 1, 2004 U.S. Dist. LEXIS 3828 (2004), affirmed by 428 F.3d 303, 368 U.S. App. D.C. 224, 2005 U.S. App. LEXIS 23828 (2005).

For equal protection purposes, individuals within and without the District of Columbia are not similarly situated with respect to congressional legislation enacted in Congress' role as local sovereign. *Banner v. United States*, 303 F.Supp.2d 1, 2004 U.S. Dist. LEXIS 3828 (2004), affirmed by 428 F.3d 303, 368 U.S. App. D.C. 224, 2005 U.S. App. LEXIS 23828 (2005).

For equal protection purposes, residents of District of Columbia are a distinct class that is not comparable to any other group of citizens. *Banner v. United States*, 303 F.Supp.2d 1, 2004 U.S. Dist. LEXIS 3828 (2004), affirmed by 428 F.3d 303, 368 U.S. App. D.C. 224, 2005 U.S. App. LEXIS 23828 (2005).

Constitutional safeguard of equal protection applies to protect District of Columbia residents, as all citizens of the nation, from discrimination. *Banner v. United States*, 303 F.Supp.2d 1, 2004 U.S. Dist. LEXIS 3828 (2004), affirmed by 428 F.3d 303, 368 U.S. App. D.C. 224, 2005 U.S. App. LEXIS 23828 (2005).

Fourteenth Amendment.

District of Columbia is not a "State" within

meaning of Fourteenth Amendment, and neither the District nor its officers are subject to its restrictions. U.S. Const. Amend. 14. District of Columbia v. Carter, 93 S.Ct. 602, 1973 U.S. LEXIS 121 (U.S. Dist. Col. 1973).

The Fourteenth Amendment is not applicable to the District of Columbia. U.S. Const. art. 1, § 8, cl. 17; Amend. 14. Neild v. District of Columbia, 110 F.2d 246, 1940 U.S. App. LEXIS 4514 (1940).

Immunity.

— Civil rights, immunity.

To evaluate substantive due process claim in which State officials have raised defense of qualified immunity, court must first address whether plaintiff has alleged deprivation of actual constitutional right at all, identifying the constitutional right at appropriate level of specificity, and second, whether that right was "clearly established," that is, whether, at time of events in question, contours of the right were sufficiently clear that reasonable officer would understand that what he was doing violated that right. Butera v. District of Columbia, 235 F.3d 637, 2001 U.S. App. LEXIS 216 (C.A.D.C. 2001).

Police officers were entitled to qualified immunity from §§ 1983 claim arising from beating death of undercover operative during attempted drug buy; law surrounding violation of operative's asserted due process right to be protected from third-party violence in context of State endangerment was not sufficiently clear that reasonable officer would have understood that what he was doing violated that right. Butera v. District of Columbia, 235 F.3d 637, 2001 U.S. App. LEXIS 216 (C.A.D.C. 2001).

Government official may not be entitled to qualified immunity for actions taken which violate clearly established statutory or constitutional rights of which reasonable person would have known. Armstrong v. D.C. Pub. Library, 154 F.Supp.2d 67, 2001 U.S. Dist. LEXIS 12585 (2001).

Director and employees of public library were entitled to qualified immunity from suit by homeless person alleging that library regulation authorizing library personnel to bar patrons based on "objectionable" appearance violated First and Fifth Amendments, and District of Columbia Human Rights Act (DCHRA); reasonable person would not have known that regulation violated clearly established constitutional right. Armstrong v. D.C. Pub. Library, 154 F.Supp.2d 67, 2001 U.S. Dist. LEXIS 12585 (2001).

District of Columbia officials were not immune from suit in civil rights action under doctrine of qualified immunity. 42 U.S.C. § 1983. Best v. District of Columbia, 743 F.

Supp. 44, 1990 U.S. Dist. LEXIS 11232 (1990), dismissed in part by 1991 U.S. Dist. LEXIS 5435 (D.D.C. Apr. 23, 1991).

Although under District of Columbia common-law principles a distinction is made between discretionary and ministerial acts of public officials and immunity is provided in cases involving the former, the common-law immunity is not available in cases arising under the Civil Rights Act or cases arising under the Constitution itself. 18 U.S.C. § 1331(a); 42 U.S.C. § 1983. Shifrin v. Wilson, 412 F. Supp. 1282, 1976 U.S. Dist. LEXIS 16230 (1976).

Although District of Columbia police chief, who allegedly was aware of dubious constitutionality of police regulation requiring a permit to give a speech in a public place and who was sought to be held liable for violations of plaintiff's constitutional rights in connection with his arrest for speaking without a permit, was not entitled to invoke a common-law immunity, he was entitled to a "good faith-reasonableness" qualified immunity. 18 U.S.C. § 1331; U.S. Const. Amends. 1, 4, 5. Shifrin v. Wilson, 412 F. Supp. 1282, 1976 U.S. Dist. LEXIS 16230 (1976).

In cases involving alleged deprivation of constitutional rights, there is no common-law immunity which protects the District of Columbia from vicarious liability for the discretionary but tortious acts of its employees. Shifrin v. Wilson, 412 F. Supp. 1282, 1976 U.S. Dist. LEXIS 16230 (1976).

Action against the mayor of the District of Columbia and others seeking relief with respect to racial discrimination against Negro employees in the department of licenses and inspections was not barred by doctrine of sovereign immunity; the courts have power under the Constitution to remedy racial discrimination by a public agency in any form. Watkins v. Washington, 366 F. Supp. 941, 1973 U.S. Dist. LEXIS 13264 (1973), affirmed by 505 F.2d 458, 164 U.S. App. D.C. 351, 1974 U.S. App. LEXIS 6393 (1974), affirmed by 505 F.2d 477 (D.C. Cir. 1974), affirmed by 8 Fair Empl. Prac. Cas. (BNA) 1008 (Sept. 11, 1974).

— Hospitals, immunity.

District of Columbia General Hospital was not immune from suit for injuries sustained by paying patient allegedly as result of negligent treatment on theory that District was a governmental entity. Spencer v. General Hospital of Dist. of Columbia, 425 F.2d 479, 1969 U.S. App. LEXIS 10117 (C.A.D.C. 1969).

— In general.

District of Columbia has no sovereign immunity from liability for nondiscretionary acts of its employees. Dellums v. Powell, 566 F.2d 216, 1977 U.S. App. LEXIS 12164 (C.A.D.C. 1977), writ of certiorari denied by 438 U.S. 916, 98 S.

Ct. 3146, 98 S. Ct. 3147, 57 L. Ed. 2d 1161, 1978 U.S. LEXIS 2450 (1978).

Common-law governmental immunity to negligent torts in District of Columbia is conditioned upon commission in course of ministerial rather than discretionary activity. *Baker v. Washington*, 448 F.2d 1200, 1971 U.S. App. LEXIS 8593 (C.A.D.C. 1971).

In District of Columbia, important inquiry in determining discretionary or ministerial nature of tortious act, for purpose of determining governmental immunity, is whether resulting injury can be subjected to judicial redress without thereby jeopardizing quality and efficiency of government itself. *Baker v. Washington*, 448 F.2d 1200, 1971 U.S. App. LEXIS 8593 (C.A.D.C. 1971).

Determination of whether District of Columbia's function causing injury was governmental or proprietary is not a valid test to decide whether District is immune from liability for the injury. *Spencer v. General Hospital of Dist. of Columbia*, 425 F.2d 479, 1969 U.S. App. LEXIS 10117 (C.A.D.C. 1969).

To the extent that a councilman of the District of Columbia Council acted within the scope of his employment in making public statements that allegedly impugned the ethics and judgment of a District of Columbia employee, as required to render the District of Columbia liable under a respondeat superior theory, the councilman was protected by the doctrine of official immunity under District of Columbia law. *Evans v. District of Columbia*, 391 F.Supp.2d 160, 2005 U.S. Dist. LEXIS 21088 (2005).

Under District of Columbia common-law principles, a distinction is made between discretionary and ministerial acts of public officials, and immunity is provided in cases involving the former. *Shifrin v. Wilson*, 412 F. Supp. 1282, 1976 U.S. Dist. LEXIS 16230 (1976).

The test for determining whether a given governmental function of the District of Columbia is discretionary and therefore one to which immunity from suit ought to be applied is whether that function is of such a nature as to pose threats to the quality and efficiency of government in the District if liability in tort was made the consequence of negligent act or omission. *Shifrin v. Wilson*, 412 F. Supp. 1282, 1976 U.S. Dist. LEXIS 16230 (1976).

District of Columbia Redevelopment Land Agency's (RLA) obligation as lessor under lease agreement for marina to approve assignments of the lease that fully conformed to the requirements of the lease and RLA's determination of whether lessee was in default before assignment could occur were ministerial rather than discretionary actions, and thus, RLA was not protected by governmental immunity in action for tortious interference with contract brought by assignee of lease, after RLA determined that

lessee was in default and required termination of assignment agreement. *Casco Marina Dev., L.L.C. v. D.C. Redevelopment Land Agency*, 834 A.2d 77, 2003 D.C. App. LEXIS 622 (2003).

While "sovereign immunity" is immunity a political community or institution enjoys by right of its political status, and not merely by virtue of legal function it performs at given time, and may be reclaimed by sovereign even if waived by permission or by statute, derivative immunity enjoyed by municipality ("municipal immunity") inheres in it only when it performs sovereign function, such as vindication of public right, and then only with reference to function performed. *District of Columbia v. Owens-Corning Fiberglas Corp.*, 572 A.2d 394, 1989 D.C. App. LEXIS 164 (1989), writ of certiorari denied by 498 U.S. 880, 111 S. Ct. 213, 112 L. Ed. 2d 173, 1990 U.S. LEXIS 4857, 59 U.S.L.W. 3250 (1990).

In District of Columbia, sovereign immunity survives for discretionary, but not ministerial, acts of government. *District of Columbia v. North Washington Neighbors, Inc.*, 367 A.2d 143, 1976 D.C. App. LEXIS 446 (1976), writ of certiorari denied by 434 U.S. 823, 98 S. Ct. 68, 54 L. Ed. 2d 80, 1977 U.S. LEXIS 2835 (1977).

Municipal immunity of District of Columbia is matter of common-law theory of municipal governmental immunity as developed in case law of jurisdiction, and is not derived from sovereignty of United States or limited to same extent as that of federal government under Federal Tort Claims Act. 18 U.S.C. § 2671 et seq.; D.C. Code § 1-922. *Wade v. District of Columbia*, 310 A.2d 857, 1973 D.C. App. LEXIS 374 (1973).

District of Columbia is immune from suit for torts of agents under doctrine of municipal immunity only if act complained of was committed in exercise of discretionary function and if act is committed in exercise of ministerial function, District must respond. D.C. Code § 1-922. *Wade v. District of Columbia*, 310 A.2d 857, 1973 D.C. App. LEXIS 374 (1973).

— Parole officers, immunity.

Parole officer of District of Columbia, and District itself when sued for acts of officer under theory of respondeat superior, are protected by sovereign immunity if officer's acts are discretionary, but subject to liability if acts are ministerial in character. D.C. Code § 1-102(a). *Rieser v. District of Columbia*, 563 F.2d 462, 1977 U.S. App. LEXIS 12002 (C.A.D.C. 1977), modified en banc by 580 F.2d 647, 188 U.S. App. D.C. 384, 1978 U.S. App. LEXIS 11361 (1978).

Where parole officer of District of Columbia was under clear duty, defined by Department of Corrections policy, to disclose parolee's full adult record when referring him for employment, and was similarly under duty to provide

adequate supervision for parolee's parole, parole officer's actions in failing to disclose parolee's prior sex-related convictions to parolee's potential employers was "ministerial," not "discretionary" action, and District therefore was not shielded by sovereign immunity from liability arising out of parolee's actions in raping and murdering woman in apartment complex where he was employed. D.C. Code § 1-102(a). *Rieser v. District of Columbia*, 563 F.2d 462, 1977 U.S. App. LEXIS 12002 (C.A.D.C. 1977), modified en banc by 580 F.2d 647, 188 U.S. App. D.C. 384, 1978 U.S. App. LEXIS 11361 (1978).

— Police officers, immunity.

Although District of Columbia police captain, who ordered plaintiff's arrest for violating speech regulation, was sought to be held liable on ground that he either knew or should have known that the regulation was unconstitutional and, consequently, that his actions constituted an unwarranted deprivation of plaintiff's First, Fourth and Fifth Amendment rights, the captain was immune from liability if he could establish that he believed, in good faith, that his conduct was lawful and that such belief was reasonable. 18 U.S.C. § 1331; U.S. Const. Amends. 1, 4, 5. *Shifrin v. Wilson*, 412 F. Supp. 1282, 1976 U.S. Dist. LEXIS 16230 (1976).

District of Columbia police inspector was individually liable for unlawful and unreasonable arrests of members of religious group, who were conducting peaceful prayer vigil near White House, where inspector had established police lines due to claimed danger of property damage and personal injury created by influx of "outsiders" into the vigil lines, but there was no evidence to suggest possibility of violence or property damage at scene of the vigil other than simple fact that "outsiders" who joined vigil had same appearance as persons who were present at monument grounds when "unknown" persons destroyed property. U.S. Const. Amend. 1. *Tatum v. Morton*, 402 F. Supp. 719, 1974 U.S. Dist. LEXIS 9547 (1974).

Operation of police force is governmental function. *Wade v. District of Columbia*, 310 A.2d 857, 1973 D.C. App. LEXIS 374 (1973).

For purposes of doctrine of municipal immunity, act of police officers in making arrest is ministerial, not discretionary. *Wade v. District of Columbia*, 310 A.2d 857, 1973 D.C. App. LEXIS 374 (1973).

District of Columbia is not immune from suit on theory of respondeat superior for police officer's alleged intentional torts of assault and battery and false arrest. D.C. Code § 23-101 et seq.; 18 U.S.C. § 2680(h). *Graves v. District of Columbia*, 287 A.2d 524, 1972 D.C. App. LEXIS 420 (1972), vacated by 310 A.2d 857, 1973 D.C. App. LEXIS 374 (D.C. 1973).

— Prisoners, immunity.

Governmental immunity did not bar prison-

er's action, as against District of Columbia, for injury from alleged unprovoked assault with sticks, including pickhandle, wielded by prison guards of District. *Baker v. Washington*, 448 F.2d 1200, 1971 U.S. App. LEXIS 8593 (C.A.D.C. 1971).

District of Columbia was not immune from suit for injuries sustained when plaintiff was arrested for drunkenness and placed in crowded cell where another prisoner assaulted him brutally on theory that maintaining police department and prisons are governmental functions. *Graham v. District of Columbia*, 433 F.2d 536, 1970 U.S. App. LEXIS 7792 (C.A.D.C. 1970).

— Prosecutorial immunity.

In supervising his subordinates in issuance of opinions to various branches of the District of Columbia government, the District's corporation counsel was not engaged in activities in the scope of the judicial process and, hence, doctrine of prosecutorial immunity did not immunize him from liability for any violation of plaintiff's constitutional rights proximately caused by alleged negligent delay in issuing opinion as to constitutionality of police regulation requiring a permit to give a speech in a public place, which delay allegedly caused plaintiff's arrest for violating the regulation. *Shifrin v. Wilson*, 412 F. Supp. 1282, 1976 U.S. Dist. LEXIS 16230 (1976).

Although corporation counsel for District of Columbia enjoyed no prosecutorial immunity because of alleged negligent supervision of his subordinates in issuing opinion as to constitutionality of police regulation requiring a permit to give a speech in a public place, the counsel, sought to be held liable for alleged violation of plaintiff's constitutional rights because of his arrest prior to issuance of opinion that regulation was unconstitutional, was entitled to a "good faith-reasonableness" qualified immunity. U.S. Const. Amends. 1, 4, 5; 18 U.S.C. § 1331(a). *Shifrin v. Wilson*, 412 F. Supp. 1282, 1976 U.S. Dist. LEXIS 16230 (1976).

— Public market, immunity.

Operation of public market by District of Columbia is a proprietary function and District is liable for injuries to a customer at a public market, under the law relating to its proprietary obligation as the owner and operator of property used for business purposes to one invited there as a customer, and the mere fact that the market is operated pursuant to a specific mandate of Congress does not change that principle. D.C. Code 1915, §§ 1-102, 1-103, 1-218, 10-137. *District of Columbia v. Green*, 223 F.2d 312, 1955 U.S. App. LEXIS 3956 (C.A.D.C. 1955).

— Public services, immunity.

Rule of municipal nonliability for provision of public services is special application of rule of

foreseeability, and considerations of duty and sovereign liability should therefore be examined separately. D.C. Code § 1-102(a). *Rieser v. District of Columbia*, 563 F.2d 462, 1977 U.S. App. LEXIS 12002 (C.A.D.C. 1977), modified en banc by 580 F.2d 647, 188 U.S. App. D.C. 384, 1978 U.S. App. LEXIS 11361 (1978).

For the District of Columbia to have immunity from liability pursuant to public duty doctrine for wrongful death and survival claims brought by estate of decedent who was stabbed to death in poorly lit wooden enclosure placed around train station due to construction, estate was required to allege that one of the city's public services failed to protect the decedent. *Briggs v. Wash. Metro. Area Transit Auth.*, 293 F.Supp.2d 8, 2003 U.S. Dist. LEXIS 23662 (2003).

Under the public duty doctrine, the District of Columbia owes no duty to provide public services to particular citizens as individuals; thus, immunity from tort liability under the public duty doctrine, unlike under the question of sovereign immunity, applies only to actions taken in the course of providing public services. *Briggs v. Wash. Metro. Area Transit Auth.*, 293 F.Supp.2d 8, 2003 U.S. Dist. LEXIS 23662 (2003).

For purpose of municipal immunity against running of statutes of limitations and repose, which inheres only when District of Columbia brings suit seeking to vindicate public rights and involving performance of public functions, District of Columbia does not perform "public function" every time it sues for money; rather, where District acquires right of action directly related to its duty to perform service to public, or to vindicate overwhelmingly public interest or right, suit to recover money damages to enable District to perform that service is public rather than proprietary. *District of Columbia v. Owens-Corning Fiberglas Corp.*, 572 A.2d 394, 1989 D.C. App. LEXIS 164 (1989), writ of certiorari denied by 498 U.S. 880, 111 S. Ct. 213, 112 L. Ed. 2d 173, 1990 U.S. LEXIS 4857, 59 U.S.L.W. 3250 (1990).

— Roadways, immunity.

District of Columbia's municipal acts involving designing of streets and control of flow of traffic over them were discretionary in nature and therefore enjoyed tort immunity. *District of Columbia v. North Washington Neighbors, Inc.*, 367 A.2d 143, 1976 D.C. App. LEXIS 446 (1976), writ of certiorari denied by 434 U.S. 823, 98 S. Ct. 68, 54 L. Ed. 2d 80, 1977 U.S. LEXIS 2835 (1977).

— Statutes of limitations, immunity.

Under common-law principle of "nullum tempus occurrit regi" ("no time runs against the sovereign"), the District of Columbia enjoys common-law "municipal immunity" from effects

of statutes of limitations and repose when suing in its municipal capacity to vindicate public rights. *District of Columbia v. Owens-Corning Fiberglas Corp.*, 572 A.2d 394, 1989 D.C. App. LEXIS 164 (1989), writ of certiorari denied by 498 U.S. 880, 111 S. Ct. 213, 112 L. Ed. 2d 173, 1990 U.S. LEXIS 4857, 59 U.S.L.W. 3250 (1990).

Since Congress is sovereign in District of Columbia, it enjoys usual sovereign immunities, including benefit of common-law principle of "nullum tempus occurrit regi" ("no time runs against the sovereign"). *District of Columbia v. Owens-Corning Fiberglas Corp.*, 572 A.2d 394, 1989 D.C. App. LEXIS 164 (1989), writ of certiorari denied by 498 U.S. 880, 111 S. Ct. 213, 112 L. Ed. 2d 173, 1990 U.S. LEXIS 4857, 59 U.S.L.W. 3250 (1990).

District of Columbia's tort suit to recover removal costs and other damages associated with presence of asbestos-containing products in public buildings was suit to vindicate "public right" and involved performance of "public function" such that district enjoyed common-law municipal immunity from effects of statutes of limitations and repose. *District of Columbia v. Owens-Corning Fiberglas Corp.*, 572 A.2d 394, 1989 D.C. App. LEXIS 164 (1989), writ of certiorari denied by 498 U.S. 880, 111 S. Ct. 213, 112 L. Ed. 2d 173, 1990 U.S. LEXIS 4857, 59 U.S.L.W. 3250 (1990).

— Waiver of defense, immunity.

District of Columbia did not waive its defense of immunity from suit arising out of collision between private vehicle and Police Department patrol wagon by filing suit against driver of such vehicle. D.C. Code 1951, §§ 1-102, 1-902 to 1-905, 12-208. *Adams v. District of Columbia*, 122 A.2d 765, 1956 D.C. App. LEXIS 269 (Cr.App. 1956).

Injunctive relief.

The District of Columbia is a municipal corporation, and injunctions against it will bind its officers, agents and employees who have notice of the order. D.C. Code § 1-102. *Morrow v. District of Columbia*, 417 F.2d 728, 1969 U.S. App. LEXIS 12758 (C.A.D.C. 1969).

Claims for injunctive relief are properly directed at public officials, while claims for damages must be filed against the District of Columbia if District funds are to be reached. D.C. Code SCR, Civil Rules 8(f), 15(a, c); D.C. Code § 12-309. *Keith v. Washington*, 401 A.2d 468, 1979 D.C. App. LEXIS 348 (1979).

Liability.

— Civil rights.

In light of unique status of District of Columbia and absent any indication in language, purposes or history of civil rights statute dealing only with those deprivations of rights that

are accomplished under the color of the law of "any State or Territory" of a legislative intent to include the District within scope of its coverage, District of Columbia does not constitute a "State or Territory" within meaning of the statute; disapproving *Sewell v. Pegelow*, 291 F.2d 196 (CA4 1961). 42 U.S.C. § 1983. *District of Columbia v. Carter*, 93 S.Ct. 602, 1973 U.S. LEXIS 121 (U.S. Dist. Col. 1973).

Under State endangerment concept, individual can assert substantive due process right to protection by District of Columbia from third-party violence when District of Columbia officials affirmatively act to increase or create danger that ultimately results in individual's harm. *Butera v. District of Columbia*, 235 F.3d 637, 2001 U.S. App. LEXIS 216 (C.A.D.C. 2001).

To assert substantive due process violation against District of Columbia under State endangerment concept, plaintiff must show that District's conduct was so egregious, so outrageous, that it may fairly be said to shock contemporary conscience. *Butera v. District of Columbia*, 235 F.3d 637, 2001 U.S. App. LEXIS 216 (C.A.D.C. 2001).

There is no inconsistency between Federal Tort Claims Act and doctrine of respondeat superior which would exclude imposition of liability on the District of Columbia for any false arrest and violation of First Amendment rights perpetrated by chief of metropolitan police department. 18 U.S.C. § 2680(h); U.S. Const. Amend. 1. *Dellums v. Powell*, 566 F.2d 216, 1977 U.S. App. LEXIS 12164 (C.A.D.C. 1977), writ of certiorari denied by 438 U.S. 916, 98 S. Ct. 3146, 98 S. Ct. 3147, 57 L. Ed. 2d 1161, 1978 U.S. LEXIS 2450 (1978).

Civil rights statute does not apply to officers of the District of Columbia. 42 U.S.C. § 1983. *Dellums v. Powell*, 566 F.2d 216, 1977 U.S. App. LEXIS 12164 (C.A.D.C. 1977), writ of certiorari denied by 438 U.S. 916, 98 S. Ct. 3146, 98 S. Ct. 3147, 57 L. Ed. 2d 1161, 1978 U.S. LEXIS 2450 (1978).

Fact that civil rights statute does not provide basis for suits against municipalities did not preclude District of Columbia from being held liable, under doctrine of respondeat superior, for any false arrest and denial of civil rights by chief of metropolitan police department as alleged in a Bivens action. 42 U.S.C. § 1983. *Dellums v. Powell*, 566 F.2d 216, 1977 U.S. App. LEXIS 12164 (C.A.D.C. 1977), writ of certiorari denied by 438 U.S. 916, 98 S. Ct. 3146, 98 S. Ct. 3147, 57 L. Ed. 2d 1161, 1978 U.S. LEXIS 2450 (1978).

No federal statutory basis existed for action which is brought, under civil rights statute relating to actions under color of law of any state or territory, against District of Columbia and its police chief by victim of shooting committed by officer of District of Columbia police

department. 42 U.S.C. § 1983. *Marusa v. District of Columbia*, 484 F.2d 828, 1973 U.S. App. LEXIS 8264 (C.A.D.C. 1973).

There are two ways in which a plaintiff alleging substantive due process violation might meet the "grave unfairness" requirement applicable in the District of Columbia Circuit: (1) a substantial infringement of the law prompted by personal or group animus, or (2) a deliberate flouting of the law that trammels significant personal or property rights. *Crockett v. D.C. Metro. Police Dep't*, 293 F.Supp.2d 63, 2003 U.S. Dist. LEXIS 23632 (2003).

District of Columbia police department's termination of officer was not arbitrary or capricious and was not gravely unfair, so as to violate substantive due process; officer pled guilty to forging credit union letter and altering pay stubs that were forwarded to mortgage loan officer, department had interest in maintaining reputation and quality of police force, and officer who claimed he was terminated for arresting senior White House advisor submitted no affidavits to support his charges that department made false accusations and overstated facts. *Crockett v. D.C. Metro. Police Dep't*, 293 F.Supp.2d 63, 2003 U.S. Dist. LEXIS 23632 (2003).

District of Columbia is considered a municipality for purposes of §§ 1983. *Arnold v. District of Columbia*, 211 F.Supp.2d 144, 2002 U.S. Dist. LEXIS 13709 (2002).

District of Columbia was a suable entity under 42 U.S.C. § 1983; District was a municipality, rather than a state or territory that was immune from suit under § 1983. 18 U.S.C. §§ 1343, 1343(a)(3), (b), (b)(1); 42 U.S.C. § 1983. *Best v. District of Columbia*, 743 F. Supp. 44, 1990 U.S. Dist. LEXIS 11232 (1990), dismissed in part by 1991 U.S. Dist. LEXIS 5435 (D.D.C. Apr. 23, 1991).

Neither District of Columbia nor its officers were amenable to suit under statute providing federal remedies in suits against state officers based on acts committed under color of state law and in violation of rights, privileges and immunities secured under the Constitution and laws of the United States in civil rights class action brought by plaintiff who, following his arrest, was taken into custody and held for 32 hours before being presented to superior court judge for setting of bail. 42 U.S.C. § 1983. *Jones v. District of Columbia*, 424 F. Supp. 110, 1977 U.S. Dist. LEXIS 18039 (1977).

Municipalities, including the District of Columbia, can be held liable in actions for deprivation of constitutional rights where such actions are brought directly under the Constitution, rather than under Civil Rights Act of 1871. 18 U.S.C. § 1331(a); 42 U.S.C. § 1983. *Shifrin v. Wilson*, 412 F. Supp. 1282, 1976 U.S. Dist. LEXIS 16230 (1976).

In federal actions brought under statute creating cause of action for deprivation of constitutionally protected rights, the District of Columbia can be held liable for its own acts and for those of its employees, regardless of whether those acts would fall within the common-law immunity for discretionary functions. 18 U.S.C. § 1331(a). *Shifrin v. Wilson*, 412 F. Supp. 1282, 1976 U.S. Dist. LEXIS 16230 (1976).

A person acts under the "color of state law" within the meaning of §§ 1983 when he exercises a power possessed by virtue of state law and made possible only because the actor is clothed with the authority of state law. *Weishapl v. Sowers*, 771 A.2d 1014, 2001 D.C. App. LEXIS 100 (2001).

If the defendant's conduct satisfies the state action requirement for purposes of the Fourteenth Amendment, that conduct is also action under color of state law and will support a suit under §§ 1983. *Weishapl v. Sowers*, 771 A.2d 1014, 2001 D.C. App. LEXIS 100 (2001).

— Public order, liability.

Evidence that metropolitan police department of District of Columbia is under general duty to enforce laws of the United States within the District, that there is a Capitol police force with special obligation to patrol Capitol grounds, that the Capitol police force is staffed by members of the metropolitan police department, that chief of the metropolitan police had furnished members of the metropolitan police force for purpose of keeping order during demonstrations, and that the Capitol police force was under the direction of United States officials demonstrated that District of Columbia could be held liable for unlawful arrests of demonstrators despite contention that the chief had become, at the time of the arrests, a borrowed servant of the United States. D.C. Code § 9-126. *Dellums v. Powell*, 566 F.2d 216, 1977 U.S. App. LEXIS 12164 (C.A.D.C. 1977), writ of certiorari denied by 438 U.S. 916, 98 S. Ct. 3146, 98 S. Ct. 3147, 57 L. Ed. 2d 1161, 1978 U.S. LEXIS 2450 (1978).

Lessee of property which was destroyed during riot had no substantive right to recover from the District of Columbia its losses resulting from failure of the District or its officers to keep the peace. *Westminster Investing Corp. v. G. C. Murphy Co.*, 434 F.2d 521, 1970 U.S. App. LEXIS 6988 (C.A.D.C. 1970).

Absent legislation to contrary, District of Columbia is not liable for losses incurred by actions of riotous persons as a result of failure of District or its officers to maintain public order. *Amos v. District of Columbia*, 309 A.2d 305, 1973 D.C. App. LEXIS 353 (1973).

— Respondeat superior, liability.

Prisoner could recover from District of Columbia on complaint charging unprovoked as-

sault with sticks, including pickhandle, wielded by prison guards in District of Columbia, and serious back injury resulting, providing he could bring conduct complained of within confines of respondeat superior, lacking which proof his action would fail. *Baker v. Washington*, 448 F.2d 1200, 1971 U.S. App. LEXIS 8593 (C.A.D.C. 1971).

District of Columbia, under common-law theory of respondeat superior, was liable for actions of police inspector who was operating within scope of his duties as senior police officer at scene of unlawful arrests of members of religious group who were conducting peaceful prayer vigil near White House. *Tatum v. Morton*, 402 F. Supp. 719, 1974 U.S. Dist. LEXIS 9547 (1974).

The District of Columbia is vicariously liable, under the doctrine of respondeat superior, for negligence by its officers who are acting within the scope of their employment. *District of Columbia v. Chinn*, 839 A.2d 701, 2003 D.C. App. LEXIS 754 (2003).

District of Columbia may be sued under common-law doctrine of respondeat superior for intentional torts of its employees acting within scope of their employment. D.C. Code § 1-922. *Wade v. District of Columbia*, 310 A.2d 857, 1973 D.C. App. LEXIS 374 (1973).

— Torts, liability.

Under Act Cong. June 11, 1878 (20 Stat. p. 102, c. 180), declaring the District of Columbia a municipal corporation, and vesting its government as such in three commissioners, among whose duties is the control of streets therein, the District is liable for injuries to the person arising from the negligence of the commissioners in maintaining the streets of the city of Washington in a safe condition for public use. *District of Columbia v. Woodbury*, 10 S.Ct. 990, 1890 U.S. LEXIS 2224 (U.S. Dist. Col. 1890).

Award of punitive damages against officers, under District of Columbia law, for death of citizen they used as operative in drug buy was supported by sufficient evidence; officers sent operative, unwatched and unmonitored, into housing complex that they should have realized was source of criminal narcotics sales and violence, without making the requisite threshold evaluation of need to use citizen as police operative and thereby expose him to potential danger. *Butera v. District of Columbia*, 235 F.3d 637, 2001 U.S. App. LEXIS 216 (C.A.D.C. 2001).

Personal representative of estate of decedent alleged sufficient facts to support District of Columbia's potential liability for criminal acts of third party, after decedent was stabbed to death by unknown criminal assailant in allegedly unsafe and poorly lit wooden enclosure around train station's escalators designed to

protect pedestrians from nearby construction; personal representative alleged that District should have foreseen the criminal act because of the design of the makeshift enclosure, lack of lighting and security, and amount of crime in the area. *Briggs v. Wash. Metro. Area Transit Auth.*, 293 F.Supp.2d 8, 2003 U.S. Dist. LEXIS 23662 (2003).

Public duty doctrine did not bar tort liability of District of Columbia as to allegations brought by estate of decedent who was stabbed to death in poorly lit wooden enclosure placed around train station due to construction, in which estate alleged that it was foreseeable due to District's negligence that an unknown criminal would commit a crime against pedestrians in enclosure; allegation that District was negligent in constructing and maintaining makeshift enclosures around station was type of negligence that was not related to delivery of any public service. *Briggs v. Wash. Metro. Area Transit Auth.*, 293 F.Supp.2d 8, 2003 U.S. Dist. LEXIS 23662 (2003).

District of Columbia may be sued for injuries resulting from defective playground equipment, but proof of actual or constructive notice of defect which caused injury is a necessary predicate to its liability, and absent such proof directed verdict is proper. *Miller v. District of Columbia*, 343 A.2d 278, 1975 D.C. App. LEXIS 241 (1975).

District of Columbia may be sued for damages for breach of its duty to a citizen. D.C. Code § 1-102. *District of Columbia v. North Washington Neighbors, Inc.*, 336 A.2d 828, 1975 D.C. App. LEXIS 371 (1975).

Suit which sought to recover damages for loss of property stored in a warehouse partially destroyed by rioting mobs and which was based on allegation of negligent failure to provide against such an occurrence failed to state a valid claim for relief against District of Columbia. *Amos v. District of Columbia*, 309 A.2d 305, 1973 D.C. App. LEXIS 353 (1973).

Mayoral powers and duties.

Upon findings of hearing committee and equal employment opportunity officer of racial discrimination in the District of Columbia department of licenses and inspections, mayor had discretion in framing an appropriate remedy, but where a definite and persistent pattern of unconstitutional racial discrimination was demonstrated, it was not sufficient to express the hope that discrimination would disappear and to exhort those involved to a better performance; mayor was obliged to take affirmative steps to reenforce his expectations. *Watkins v. Washington*, 366 F. Supp. 941, 1973 U.S. Dist. LEXIS 13264 (1973), affirmed by 505 F.2d 458, 164 U.S. App. D.C. 351, 1974 U.S. App. LEXIS 6393 (1974), affirmed by 505 F.2d 477 (D.C. Cir.

1974), affirmed by 8 Fair Empl. Prac. Cas. (BNA) 1008 (Sept. 11, 1974).

Municipal status and powers.

— In general.

Whether the District of Columbia constitutes a "State or Territory" within meaning of any particular statutory or constitutional provision depends upon the character and aim of the specific provision involved. *District of Columbia v. Carter*, 93 S.Ct. 602, 1973 U.S. LEXIS 121 (U.S. Dist. Col. 1973).

Act Cong. Feb. 21, 1871 (16 Stat. 419), constituted the District of Columbia "a body corporate for municipal purposes," with power to make contracts and sue and be sued. A governor and legislature were created, and a board of public works, to consist of the governor and four persons appointed by the president and senate. Prior to that time the government had been strictly municipal, and the United States government did not participate therein, in local matters. Act June 20, 1874 (18 Stat. 116), abolished the government created by the act of 1871, and authorized the president and senate to appoint a commission to exercise the functions of the board of public works. Act June 11, 1878 (20 Stat. 102), provided that the District should "remain and continue a municipal corporation," and preserved all rights of action by and against it, in statu quo. Held, that the District is a municipal corporation with a right to sue and be sued, and not a department of the United States government, or a sovereignty. *Metropolitan R. Co. v. District of Columbia*, 10 S.Ct. 19, 1889 U.S. LEXIS 1834 (U.S. Dist. Col. 1889).

The District of Columbia is a municipal corporation although its organization is peculiar, there being no general organic law covering all of the ordinary powers usually conferred in the creation of a municipal corporation; no formal charter. *District of Columbia v. Tyrrell*, 41 App. D.C. 463, 1914 U.S. App. LEXIS 2200 (1914).

Agencies and departments within the District of Columbia government are not suable as separate entities. *Doe v. District of Columbia*, 238 F.Supp.2d 212, 2002 U.S. Dist. LEXIS 24171 (2002).

A person making or seeking to make a contract with a municipal corporation is charged or imputed with knowledge of the scope of the agency's and its agents' authority. *Leonard v. District of Columbia*, 801 A.2d 82, 2002 D.C. App. LEXIS 318 (2002).

District of Columbia is a municipal corporation. D.C. Code 1951, § 1-102. *Randolph v. District of Columbia*, 156 A.2d 686, 1959 D.C. App. LEXIS 335 (Cr.App. 1959).

— Legislative power of Congress, municipal status and powers.

The delegation to Congress of power to legis-

late for the District of Columbia is sweeping and inclusive to the end that Congress may legislate within the District for every proper purpose of government. U.S. Const. art. 1, § 8, cl. 17. *Neild v. District of Columbia*, 110 F.2d 246, 1940 U.S. App. LEXIS 4514 (1940).

Within the District of Columbia, there is no division of legislative powers such as exists between federal and state governments, but a consolidation of powers including within its breadth all proper powers of legislation. U.S. Const. art. 1, § 8, cl. 17. *Neild v. District of Columbia*, 110 F.2d 246, 1940 U.S. App. LEXIS 4514 (1940).

Subject only to constitutional prohibitions acting directly or by implication upon the federal government, Congress has full and unlimited jurisdiction to provide for the general welfare of citizens within the District of Columbia by any legislation which it may deem conducive to that end. U.S. Const. art. 1, § 8, cl. 17; *Amends. 1-8. Neild v. District of Columbia*, 110 F.2d 246, 1940 U.S. App. LEXIS 4514 (1940).

When legislating for the District of Columbia, Congress acts as a legislature of national character, exercising complete legislative control as contrasted with the limited power of a state legislature or with the limited sovereignty which Congress exercises within boundaries of the states. U.S. Const. art. 1, § 8, cl. 17. *Neild v. District of Columbia*, 110 F.2d 246, 1940 U.S. App. LEXIS 4514 (1940).

The power of Congress to legislate for the District of Columbia carries with it all incidental powers necessary to its complete and effectual execution. U.S. Const. art. 1, § 8, cl. 17. *Neild v. District of Columbia*, 110 F.2d 246, 1940 U.S. App. LEXIS 4514 (1940).

The delegation to Congress of power to exercise exclusive jurisdiction in all cases over the District of Columbia included the power to tax. U.S. Const. art. 1, § 8, cl. 17. *Neild v. District of Columbia*, 110 F.2d 246, 1940 U.S. App. LEXIS 4514 (1940).

Though Congress acts like a state legislature in legislating for the District of Columbia, it is not thereby subject to the limitations imposed by the Constitution upon the states, but may exercise general legislative powers delegated to it by the Constitution, including the power granted by the commerce clause. U.S. Const. art. 1, § 8, cl. 17. *Neild v. District of Columbia*, 110 F.2d 246, 1940 U.S. App. LEXIS 4514 (1940).

The obligation to pay taxes arises only by force of legislative action. *School St. Assocs. v. District of Columbia*, 764 A.2d 798, 2001 D.C. App. LEXIS 4 (2001).

— Local law, municipal status and powers.

Basic purpose of Congress in delegating certain legislative powers to District of Columbia Government was to relieve Congress of burden of legislating on matters essentially local in nature. D.C. Code 1981, § 1-102. *District of Columbia v. Owens-Corning Fiberglas Corp.*, 604 F. Supp. 1459, 1985 U.S. Dist. LEXIS 21803 (1985).

If Congress chose, it could govern District of Columbia directly, without help of municipal government or its agencies. *District of Columbia v. Owens-Corning Fiberglas Corp.*, 572 A.2d 394, 1989 D.C. App. LEXIS 164 (1989), writ of certiorari denied by 498 U.S. 880, 111 S. Ct. 213, 112 L. Ed. 2d 173, 1990 U.S. LEXIS 4857, 59 U.S.L.W. 3250 (1990).

§ 1-103. Officers of corporation.

The Mayor of the District of Columbia and the members of the Council of the District of Columbia shall be deemed and taken as officers of such corporation.

(June 11, 1878, 20 Stat. 102, ch. 180, § 1; 1967 Reorg. Plan No. 3, § 405, 81 Stat. 978.)

Prior Codifications. — 1981 Ed., § 1-103. 1973 Ed., § 1-103.

Editor's notes. — Organic Act of 1878: See Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 405 of Reorganization Plan No. 3 of 1967 transferred

all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)),

appropriate changes in terminology were made in this section.

§ 1-104. District as successor corporation.

The District of Columbia is the successor of the corporations of Washington and Georgetown, and all the property of said corporations, and of the County of Washington, is vested in the District of Columbia.

(R.S., D.C., § 96.)

Prior Codifications. — 1981 Ed., § 1-104. 1973 Ed., § 1-104.

§ 1-105. Former corporation continued for certain purposes.

The corporation of the District of Columbia is continued for all the purposes of this section and other acts, for the collection of taxes, for suing and being sued, for causes arising prior to June 20, 1874, and for acquiring and holding real estate for school and municipal purposes.

(Mar. 3, 1877, 19 Stat. 402, ch. 117, § 15.)

Cross references. — Control of school buildings, see § 38-401.

Prior Codifications. — 1981 Ed., § 1-105. 1973 Ed., § 1-105.

§ 1-106. Records of former corporations and of levy court made property of District of Columbia.

All records, books, files, maps, plats, surveys, drawings, writings, and other papers, of the late corporations of Washington and Georgetown, or of the levy court of the District of Columbia, or made by persons in the employment or service of either of them, or of the District of Columbia, in the course of such employment or service, or which shall be so made after February 4, 1878, are, and shall be, the property of the District of Columbia.

(Feb. 4, 1878, 20 Stat. 23, ch. 12, § 3.)

Prior Codifications. — 1981 Ed., § 1-106. 1973 Ed., § 1-106.

§ 1-107. “Limits of City of Washington” defined; Georgetown abolished; general laws of Washington extended to former Georgetown.

That portion of the District included within the limits of the City of Washington, as the same existed on the 21st day of February, 1871, and all that part of the District of Columbia embraced within the bounds and constituting on February 11, 1895, the City of Georgetown (as referred to in the Acts of Congress approved February 21, 1871, 16 Stat. 419, ch. 62, and June 20, 1874, 18 Stat. 116, ch. 337) shall be known as and shall constitute the City of Washington, the federal capital; and all general laws, ordinances, and regulations of the City of Washington are extended and made applicable to that part

of the District of Columbia formerly known as the City of Georgetown. The title and existence of said Georgetown as a separate and independent city by law is abolished. Nothing in this section shall operate to affect or repeal existing law making Georgetown a port of entry, except as to its name.

(R.S., D.C., § 94; Feb. 11, 1895, 28 Stat. 650, ch. 79.)

Prior Codifications. — 1981 Ed., § 1-107. 1973 Ed., § 1-107.

CASE NOTES

Geographic scope of laws, due process.

Fact that act adopted by corporation of city of Washington prohibiting persons who have obtained license for conducting place of public amusement of any kind from making any distinction on account of race or color was applicable only to that part of the District of Colum-

bia formerly included in the cities of Washington and Georgetown, did not render act invalid as violation of due process. D.C. Code 1951, § 1-107; U.S. Const. Amends. 5, 14. *Central Amusement Co. v. District of Columbia*, 121 A.2d 865, 1956 D.C. App. LEXIS 200 (Cr.App. 1956).

§ 1-108. Name of Uniontown changed to Anacostia.

That portion of the District of Columbia prior to April 22, 1886, known and designated as Uniontown, shall be known and designated as Anacostia.

(Apr. 22, 1886, 24 Stat. 14, ch. 58.)

Prior Codifications. — 1981 Ed., § 1-108. 1973 Ed., § 1-108.

§ 1-109. Liability.

(a) *District of Columbia.* — The District of Columbia shall defend any civil action or proceeding pending on August 5, 1997 in any court or other official municipal, state, or federal forum against the District of Columbia or its officers, employees, or agents, and shall assume any liability resulting from such an action or proceeding.

(b) *State Justice Institute.* — The State Justice Institute shall not be liable for damages or equitable relief on the basis of the activities or operations of any federal or District of Columbia agency which receives funds through the State Justice Institute pursuant to this title.

(c) *United States.* — The United States, its officers, employees, and agents, and its agencies shall not:

(1) Be responsible for the payment of any judgments, liabilities or costs resulting from any action or proceeding against the District of Columbia or its agencies, officers, employees, or agents;

(2) Be subject to liability in any case on the basis of the activities of the District of Columbia or its agencies, officers, employees, or agents; or

(3) Be subject to liability in any case under section 1979 of the Revised Statutes (42 U.S.C. 1983).

(d) *Limitations.* — Nothing in this section shall be construed as a waiver of sovereign immunity, or as limiting any other defense or immunity that would otherwise be available to the United States, the District of Columbia, their agencies, officers, employees, or agents.

(Aug. 5, 1997, 111 Stat. 786, Pub. L. 105-33, § 11723.)

Prior Codifications. — 1981 Ed., § 1-109.

Effective date. — Section 11721 of Title XI of Pub. L. 105-33, 111 Stat. 786, the National Capital Revitalization and Self-Government Improvement Act of 1997, provided that except as otherwise provided in this title, the provisions of this title shall take effect on the later of October 1, 1997, or the day the District of Columbia Financial Responsibility and Management Assistance Authority certifies that the

financial plan and budget for the District government for fiscal year 1998 meet the requirements of section 201(c)(1) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, as amended by this title.

References in text. — “This title”, referred to in subsection (b) of this section, is Title XI of Public Law 105-33.

CASE NOTES

ANALYSIS

Absolute immunity.

Qualified immunity.

Absolute immunity.

Under District of Columbia law, government officials have absolute immunity in actions for libel and slander, even if their statements are false and defamatory, if (1) the official acted within the outer perimeter of his official duties, and (2) the particular government function at issue was discretionary as opposed to ministerial. *Liser v. Smith*, 254 F.Supp.2d 89, 2003 U.S. Dist. LEXIS 4544 (2003).

Qualified immunity.

Doctrine of qualified immunity shields police

officers from civil damages liability in civil rights actions as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated. *Liser v. Smith*, 254 F.Supp.2d 89, 2003 U.S. Dist. LEXIS 4544 (2003).

Whether an officer's mistaken conclusion, that there was probable cause for an arrest, was reasonable, as would warrant grant of qualified immunity in a civil rights action by the arrestee, is generally a question for the Court, not for the jury, and in light of the purposes of qualified immunity, should be resolved as early in the proceedings as possible. *Liser v. Smith*, 254 F.Supp.2d 89, 2003 U.S. Dist. LEXIS 4544 (2003).

Subchapter II. Statehood.

Part A

CONSTITUTIONAL CONVENTION INITIATIVE.

Subpart 1—General.

§ 1-121. Purpose.

The purpose of this initiative is to propose to the registered qualified electors of the District of Columbia the question of calling a statehood constitutional convention for the purpose of forming a constitution and otherwise providing a process for a major portion of the territory now known as the District of Columbia to be admitted in the Union as a state on equal footing with the other states. The acts of the convention shall be submitted for ratification by the people, as provided for in this initiative.

(Mar. 10, 1981, D.C. Law 3-171, § 2, 27 DCR 4732; Oct. 8, 1981, D.C. Law 4-35, § 2(a), 28 DCR 3376.)

Cross references. — Constitution of State of New Columbia, see New Columbia Const., Art. 1, § 1 et seq. in Volume 1.

Prior Codifications. — 1981 Ed., § 1-111.

Legislative history of Law 3-171. — Law 3-171 was submitted to the electors of the District of Columbia on November 4, 1980, as Initiative No. 3. The results of the voting, certified by the Board of Election and Ethics on November 21, 1980, were 90,533 for the Initiative and 60,972 against the Initiative. It was transmitted to both Houses of Congress for its review on January 19, 1981.

Legislative history of Law 4-35. — Law 4-35 was introduced in Council and assigned Bill No. 4-229, which was referred to the Com-

mittee of the Whole. The Bill was adopted on first and second readings on June 16, 1981 and June 30, 1981, respectively. Signed by the Mayor on July 20, 1981, it was assigned Act No. 4-62 and transmitted to both Houses of Congress for its review.

Editor's notes. — Constitution approved: The Constitution developed by the Statehood Constitutional Convention, entitled the "Constitution of the State of New Columbia", was submitted to the electors of the District of Columbia for ratification on November 2, 1982. The results of the voting, certified by the Board of Elections and Ethics on November 10, 1982, were 61,405 for the Constitution and 54,964 against the Constitution.

§ 1-122. Questions to be presented to electors.

For the purpose of this initiative, the District of Columbia Board of Elections is authorized and directed to conduct at the next scheduled general, special, or primary election held after March 10, 1981, an election to fill the positions of delegate at-large and ward delegate to the constitutional convention, as prescribed in § 1-124.

(Mar. 10, 1981, D.C. Law 3-171, § 3, 27 DCR 4732; Oct. 8, 1981, D.C. Law 4-35, § 2(b), 28 DCR 3376; Apr. 27, 2012, D.C. Law 19-124, § 501(k)(1), 59 DCR 1862.)

Section references. — This section is referred to in § 1-124.

Prior Codifications. — 1981 Ed., § 1-112.

Effect of amendments. — D.C. Law 19-124 substituted "District of Columbia Board of Elections" for "District of Columbia Board of Elections and Ethics".

Emergency legislation. — For temporary (90 day) amendment of section, see § 401(k)(1) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 3-171. — For legislative history of D.C. Law 3-171, see Historical and Statutory Notes following § 1-121.

Legislative history of Law 4-35. — For legislative history of D.C. Law 4-35, see Historical and Statutory Notes following § 1-121.

Legislative history of Law 19-124. — Law 19-124, the "Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011", was introduced in Council and assigned Bill No. 19-511, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 6, 2011, and December 20, 2011, respectively. Signed by the Mayor on February 27, 2012, it was assigned Act No. 19-318 and transmitted to both Houses of Congress for its review. D.C. Law 19-124 became effective on April 27, 2012.

§ 1-123. Call of convention; duties of convention; adoption of constitution; rejection of constitution; election of Senator and Representative.

(a) Within 60 days after the Board of Elections has certified the election of at-large and ward delegates to the constitutional convention pursuant to § 1-124, the Mayor of the District of Columbia shall call a constitutional convention and assemble the elected delegates. The convention shall write a constitution within 90 days which shall be republican in form and shall not be repugnant to the Constitution or laws of the United States, and it shall

otherwise prepare for the admission of a major portion of the territory now known as the District of Columbia as a state.

(b) The proposed Constitution for the State of New Columbia, approved by Congress June 24, 1987, is amended to read as set forth in Volume 1 of the District of Columbia Code.

(c) If a majority of the registered qualified electors voting reject the constitution, the Mayor shall within 60 calendar days call for the reassembly of the constitutional convention and thereafter a new constitution shall be framed and the same proceedings shall be taken for its submission to the electors of the District of Columbia: Except, that if the proposed constitution of a second constitutional convention is rejected by the registered qualified electors, then the task of writing a constitution acceptable to the electorate shall be abandoned until such time as a new constitutional convention is called for by either legislative action or voter initiative.

(d)(1) Following the approval of a proposed constitution by a majority of the electors voting thereon, there shall be held an election of candidates for the offices of Senator and Representative from the new state. Such election shall be partisan and shall be held at the next regularly scheduled primary and general elections following certification by the District of Columbia Board of Elections that the proposed constitution has been approved by a majority of the electors voting thereon. In the event that the proposed constitution is approved by the electors at the general election to be held in November, 1982, the primary and general elections authorized by this paragraph shall be held in September, 1990, and November, 1990, respectively.

(2) The qualifications for candidates for the offices of Senator and Representative shall conform with the provisions of Article I of the United States Constitution and the primary and general elections shall follow the same electoral procedures as provided for candidates for nonvoting Delegate of the District of Columbia in the District of Columbia Election Code of 1955, subchapter I of Chapter 10 of this title. The term of the 1st Representative elected pursuant to this initiative shall begin on January 2, 1991, and shall expire on January 2, 1993. The terms of the 1st Senators elected pursuant to this initiative shall begin on January 2, 1991, and shall expire on January 2, 1997, and January 2, 1995, respectively. At the initial election, the candidate for Senator receiving the highest number of votes will receive the longer term and the candidate receiving the second highest number of votes will receive the shorter term. A primary and a general election to replace a Representative or a Senator whose term is about to expire shall be held in September and in November respectively, of the year preceding the year during which the term of the Representative or the Senator expires. Each Representative shall be elected for a 2-year term and each Senator shall be elected for a 6-year term as prescribed by the Constitution of the United States.

(3) The District of Columbia Board of Elections shall:

(A) Conduct elections to fill the positions of 2 United States Senators and 1 United States Representative; and

(B) Issue such rules and expressly delegate authority to officials and employees of the District of Columbia Board of Elections (such delegation of

authority only to be effective upon publication in the District of Columbia Register) as are necessary to carry out the purposes of this initiative, and related acts requiring implementation by the District of Columbia Board of Elections.

(e) A Representative or Senator elected pursuant to this subchapter shall be a public official as defined in § 1-1162.24, and subscribe to the oath or affirmation of office provided for in § 1-604.08.

(f) A Representative or Senator:

(1) Shall inform the Congress and individual members of Congress that the District of Columbia residents meet the standards traditionally required by Congress for the admission of a United States territory as a state of the United States;

(2) Shall monitor the progress of the petition for admission of New Columbia to statehood pending before the Congress and report on the progress to the District of Columbia residents;

(3) May advise the District of Columbia on matters of public policy that bear on the achievement of statehood;

(4) In accordance with subsection (g) of this section, may employ staff and expend funds donated by private sources for public purposes related to the achievement of statehood; and

(5) Shall have any other powers or duties as may be provided by law.

(g)(1) A Representative or Senator may solicit and receive contributions to support the purposes and operations of the Representative's or Senator's public office. A Representative or Senator may accept services, monies, gifts, endowments, donations, or bequests. A Representative or Senator shall establish a District of Columbia statehood fund in 1 or more financial institutions in the District of Columbia. There shall be deposited in each fund any gift or contribution in whatever form, and any monies not included in annual Congressional appropriations. A Representative or Senator is authorized to administer the Representative's or Senator's respective fund in any manner the Representative or Senator deems wise and prudent, provided that the administration is lawful, in accordance with the fiduciary responsibilities of public office, and does not impose any financial burden on the District of Columbia.

(2) Contributions may be expended for the salary, office, or other expenses necessary to support the purposes and operations of the public office of a Representative or Senator, however, each Representative or Senator shall receive compensation no greater than the compensation of the Chairman of the Council of the District of Columbia, as provided in §§ 1-204.03 and 1-611.09.

(3) Each Representative or Senator shall file with the Director of Campaign Finance a quarterly report of all contributions received and expenditures made in accordance with paragraph (1) of this subsection. No campaign activities related to election or re-election to the office of Representative or Senator shall be conducted nor shall expenditures for campaign literature or paraphernalia be authorized under paragraph (1) of this subsection.

(4) The recordkeeping requirements of subchapter III of Chapter 11A of this Title, shall apply to contributions and expenditures made under paragraph (1) of this subsection.

(5) Upon expiration of a Representative's or Senator's term of office and where the Representative or Senator has not been re-elected, the Representative's or Senator's statehood fund, established in accordance with paragraph (1) of this subsection, shall be dissolved and any excess funds shall be used to retire the Representative's or Senator's debts for salary, office, or other expenses necessary to support the purposes and operation of the public office of the Representative or Senator. Any remaining funds shall be donated to an organization operating in the District of Columbia as a not-for-profit organization within the meaning of section 501(c) of the Internal Revenue Code of 1986, approved October 22, 1986 (100 Stat. 2085; 26 U.S.C. 501(c)).

(h) A Representative or Senator elected pursuant to subsection (d) of this section, shall be subject to recall pursuant to § 1-1001.17, during the period of the Representative's or Senator's service prior to the admission of the proposed new state into the union.

(Mar. 10, 1981, D.C. Law 3-171, § 4, 27 DCR 4732; Oct. 8, 1981, D.C. Law 4-35, § 2(c), 28 DCR 3376; Aug. 14, 1982, D.C. Law 4-138, § 2, 29 DCR 2761; Aug. 2, 1983, D.C. Law 5-17, § 4, 30 DCR 3196; Aug. 10, 1984, D.C. Law 5-105, § 2, 31 DCR 3040; Apr. 23, 1985, D.C. Law 6-1, § 2, 32 DCR 1475; May 13, 1987, D.C. Law 7-2, § 2, 34 DCR 2153; June 24, 1987, D.C. Law 7-8, § 2, 34 DCR 3057; June 24, 1987, D.C. Law 7-10, § 2, 34 DCR 3286; June 8, 1990, D.C. Law 8-135, § 2, 37 DCR 2616; Apr. 27, 2012, D.C. Law 19-124, § 501(k)(2), 59 DCR 1862.)

Cross references. — Congressional vacancies, appointments, see § 1-1001.10.

Election campaigns, disclosure of financial interests, see § 1-1106.02.

Section references. — This section is referred to in §§ 1-124, 1-127, 1-131 and 1-12

Prior Codifications. — 1981 Ed., § 1-113.

Effect of amendments. — D.C. Law 19-124, in subsecs. (a), (d)(1), and (d)(3), substituted "Board of Elections" for "Board of Elections and Ethics"; in subsec. (e), substituted "§ 1-1162.24" for "§ 1-1106.02(a)"; and, in subsec. (g)(4), substituted "subchapter III of Chapter 11A of this title" for "subchapter I of Chapter 11 of this title".

Emergency legislation. — For temporary (90 day) amendment of section, see § 401(k)(2) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 3-171. — For legislative history of D.C. Law 3-171, see Historical and Statutory Notes following § 1-121.

Legislative history of Law 4-35. — For legislative history of D.C. Law 4-35, see Historical and Statutory Notes following § 1-121.

Legislative history of Law 4-138. — For legislative history of D.C. Law 4-138, see Historical and Statutory Notes following § 1-135.

Legislative history of Law 5-17. — Law 5-17 was introduced in Council and assigned Bill No. 5-11, which was referred to the Committee on Government Operations. The Bill was adopted on first, amended first and second readings on April 26, 1983, May 10, 1983 and May 24, 1983, respectively. Signed by the Mayor on June 9, 1983, it was assigned Act No. 5-34 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-105. — Law 5-105 was introduced in Council and assigned Bill No. 5-414. The Bill was adopted on first and second readings on April 30, 1984 and May 15, 1984, respectively. Signed by the Mayor on June 6, 1984, it was assigned Act No. 5-146 and transmitted to both Houses of Congress for review.

Legislative history of Law 6-1. — Law 6-1 was introduced in Council and assigned Bill No. 6-59, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on January 29, 1985 and February 12, 1985, respectively. Signed by the Mayor on February 28, 1985, it was assigned Act No. 6-11 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-2. — Law 7-2 was introduced in Council and assigned Bill No. 7-126. The Bill was adopted on first and second readings on February 17, 1987 and March 3, 1987, respectively. Signed by the

Mayor on March 19, 1987, it was assigned Act No. 7-6 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-8. — For legislative history of D.C. Law 7-8, see Historical and Statutory Notes following § 1-132.

Legislative history of Law 7-10. — Law 7-10 was introduced in Council and assigned Bill No. 7-134, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on March 31, 1987 and April 14, 1987, respectively. Signed by the Mayor on May 6, 1987, it was assigned Act No. 7-21 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-135. — For legislative history of D.C. Law 8-135, see Historical and Statutory Notes following § 1-131.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

Editor's notes. — Restriction on use of funds: Section 128 of Pub. L. 104-194, 110 Stat. 2368, the District of Columbia Appropriations Act, 1997, provided that none of the funds provided in this Act may be used by the District of Columbia to provide for salaries, expenses, or other costs associated with the offices of United States Senator or United States Representative under subsection (d) of this section.

Amendment of proposed Constitution: For text of proposed Constitution for the State of New Columbia as amended by D.C. Law 7-8, see Volume 1.

CASE NOTES

In general.

Although District of Columbia statute permitting direct nomination of duly qualified candidates for certain offices did not include United States Senator in its enumeration of those offices requiring nominating petitions, the requirement in proposed constitution that nominating petitions be submitted to obtain a

place on the ballot as a candidate for office of United States senator was approved by voters and, thus, name of candidate who failed to submit nominating petitions, as was required by law, could not be placed on the ballot as candidate for that office. *Bartel v. D.C. Bd. of Elections & Ethics*, 808 A.2d 1240, 2002 D.C. App. LEXIS 599 (2002).

§ 1-124. Composition of convention; election of delegate candidates; compensation; office space; appropriations.

(a) The constitutional convention authorized by this initiative shall consist of 45 delegates selected in the following manner: Five delegates elected at large; and 5 delegates elected from each of the 8 election wards.

(b) Candidates for at-large delegates shall file with the Board of Elections a nominating petition signed by at least 200 of the registered qualified electors of the District of Columbia such that there will be at least 25 certified signatures from each of the 8 election wards. The 5 candidates for at-large delegate who receive the highest number of votes shall be declared elected and shall serve for 3-year terms.

(c) Candidates for the ward delegate positions shall file with the Board of Elections a nominating petition signed by at least 50 of the registered qualified electors from the election ward from which the candidate seeks nomination. The 5 candidates from each of the 8 election wards receiving the highest number of votes shall be declared elected to represent that ward and shall serve for 3-year terms.

(d) Each of the elected delegates, as authorized by subsection (a) of this section, shall be entitled to receive \$30 per diem when engaged in the performance of the duties of the constitutional convention.

(e)(1) Except as they may be modified by this section, the election procedures prescribed by subchapter I of Chapter 10 of this title and subchapter III

of Chapter 11A of this Title for at-large and ward candidates for the Board of Education shall be applicable in respect to at-large and ward candidates for delegate to the constitutional convention.

(2) Each candidate for delegate and each delegate to the constitutional convention shall be a registered qualified voting resident of the District of Columbia and the discontinuance of such residence shall result in forfeiture of the convention seat occupied by such delegate. Each candidate for delegate and each delegate representing a ward shall be a registered qualified voting resident of that ward and the discontinuance of such residence in that ward shall result in forfeiture of the convention seat occupied by such ward delegate. No ward delegate shall forfeit his or her seat solely by reason of a change in ward boundaries.

(3) A vacancy in the convention arising from any cause shall be filled temporarily by the convention and such temporary appointee may serve for the remainder of the 3-year term or until such earlier time as the seat has been filled by an election which shall be held by the Board of Elections in accordance with its regulations concurrently with the earliest practicable special, primary, or general election being held to fill 1 or more offices other than that of convention delegate.

(f) The District of Columbia government shall furnish such space in public buildings for the constitutional convention as is necessary to accommodate public attendance at convention hearings, meetings, and sessions, and shall provide all records and services as may be required by the constitutional convention for carrying out its function.

(g) There is hereby authorized an appropriation from the General Fund of the District of Columbia a sum not in excess of \$400,000 to the constitutional convention for such expenses as it may have in carrying out its duties and responsibilities under this initiative.

(h) There is hereby authorized an appropriation from the General Fund of the District of Columbia a sum not in excess of \$50,000 to the Board of Elections for the administration of the elections authorized in §§ 1-122 and 1-123(b), and in otherwise carrying out the provisions of this initiative.

(Mar. 10, 1981, D.C. Law 3-171, § 5, 27 DCR 4732; Oct. 8, 1981, D.C. Law 4-35, § 2(d), 28 DCR 3376; Nov. 17, 1981, D.C. Law 4-52, § 3(a), 28 DCR 4348; Apr. 27, 2012, D.C. Law 19-124, § 501(k)(3), 59 DCR 1862.)

Section references. — This section is referred to in §§ 1-122 and 1-123.

Prior Codifications. — 1981 Ed., § 1-114.

Effect of amendments. — D.C. Law 19-124, in subsecs. (b), (c), (e)(3), and (h), substituted “Board of Elections” for “Board of Elections and Ethics”; and, in subsec. (e)(1), substituted “subchapter III of Chapter 11A of this title” for “subchapter I of Chapter 11 of this title”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 401(k)(3) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012

(D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 3-171. — For legislative history of D.C. Law 3-171, see Historical and Statutory Notes following § 1-121.

Legislative history of Law 4-35. — For legislative history of D.C. Law 4-35, see Historical and Statutory Notes following § 1-121.

Legislative history of Law 4-52. — Law 4-52 was introduced in Council and assigned Bill No. 4-270, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on July 28, 1981 and September 15, 1981, respectively. Signed by the Mayor on September 25, 1981, it

was assigned Act No. 4-89 and transmitted to both Houses of Congress for its review.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

§ 1-125. Statehood Commission.

(a) The Statehood Commission shall consist of 27 voting members appointed in the following manner:

- (1) The Mayor of the District of Columbia shall appoint 2 members;
- (2) The Chairman of the Council of the District of Columbia shall appoint 2 members;
- (3) The at-large members of the Council shall each appoint 1 member;
- (4) The ward members of the Council shall each appoint 2 members from their respective wards;
- (5) The United States Senators shall each appoint 1 member;
- (6) The United States Representative shall appoint 1 member; and
- (7) The Mayor, the Chairman of the Council, and the Councilmember whose purview the Statehood Commission comes within shall be non-voting members of the Commission.

(a-1)(1) Notwithstanding any other provision of law, members serving unexpired terms on August 26, 1994, may continue to serve until appointments or reappointments are confirmed. Appointments or reappointments shall be made immediately after August 26, 1994, in the following manner:

(A) The Mayor shall appoint 1 member for a term of 4 years and 1 member for a term of 2 years.

(B) The Chairman shall appoint 1 member for a term of 4 years and 1 member for a term of 2 years.

(C) The 2 senior at-large members of the Council shall each appoint 1 member for a 4 year term.

(D) The 2 remaining at-large members of the Council shall each appoint 1 member for a 2 year term.

(E) The ward members of the Council shall each appoint 2 members from their respective wards in the following manner:

- (i) One member for a 4 year term; and
- (ii) One member for a 2 year term.

(F) The senior United States Senator shall appoint 1 member for a 4 year term.

(G) The junior United States Senator shall appoint 1 member for a 2 year term.

(H) The United States Representative shall appoint 1 member for a 2 year term.

(2) All appointments or reappointments pursuant to subsection (a) of this section shall be for a term of 4 years.

(3) A vacancy on the Commission shall be filled in the same manner that the original appointment was made.

(4) A member of the Commission may continue to serve after the expiration of that member's term until a successor is appointed.

(a-2) All members of the Statehood Commission shall be residents of the District of Columbia.

(a-3) The chairman of the Statehood Commission shall be elected every 2 years, by the members of the commission.

(b) It shall be the duty of the Statehood Commission to educate, advocate, promote, and advance the proposition of statehood for the District of Columbia within the District of Columbia and elsewhere.

(c) Repealed.

(c-1) The Commission shall meet at least once a month. All meetings of the Commission shall be open to the public.

(Mar. 10, 1981, D.C. Law 3-171, § 6, 27 DCR 4732; Oct. 8, 1981, D.C. Law 4-35, § 2(e), 28 DCR 3376; Aug. 26, 1994, D.C. Law 10-167, § 2(a), 41 DCR 4895.)

Prior Codifications. — 1981 Ed., § 1-115.

Legislative history of Law 3-171. — For legislative history of D.C. Law 3-171, see Historical and Statutory Notes following § 1-121.

Legislative history of Law 4-35. — For legislative history of D.C. Law 4-35, see Historical and Statutory Notes following § 1-121.

Legislative history of Law 10-167. — Law 10-167, the “Statehood Commission Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-549, which was referred to the Committee on Self-Determination. The Bill was adopted on first and second readings on June 7, 1994, and June 21, 1994, respectively. Signed by the Mayor on July 8, 1994, it was assigned Act No. 10-280 and transmitted to both Houses of Congress for its review. D.C. Law 10-167 became effective on August 26, 1994.

Editor’s notes. — Sources of funding appropriation: Section 101(d) of Pub. L. 99-591, the D.C. Appropriations Act, 1987, provided that the District of Columbia shall identify the sources of funding for admission to statehood from its own locally-generated revenues and provided further that no revenues from federal sources shall be used to support the operations or activities of the Statehood Commission and Statehood Compact Commission.

Section 1(c) of Pub. L. 100-202, the District of Columbia Appropriations Act, 1988, provided that the District of Columbia shall identify the sources of funding for Admission to Statehood from its own locally-generated revenues and provided further that no revenues from Federal sources shall be used to support the operations or activities of the Statehood Commission and Statehood Compact Commission.

§ 1-126. Statehood Compact Commission.

(a) The Statehood Commission shall have the power to establish a commission to be known as the “Statehood Compact Commission”, which shall consist of members of the Statehood Commission as may be deemed necessary by the Commission, as well as an equal number of members representing the federal government as may be authorized by the President or the Congress of the United States. The Mayor, Chairman, and the Councilmember whose purview the Statehood Commission comes within shall be members of the Compact Commission. The Mayor, Chairman, and Councilmember may each delegate an individual to act in their place.

(b) It shall be the duty of the Statehood Compact Commission:

(1) To conduct a full and complete study of the necessary and appropriate legislation and administrative action that must be taken in order to facilitate the transfer of authority and functions over that portion of the District of Columbia which will comprise the new state;

(2) To give special consideration to the relationship that should be developed to secure and maintain any special federal interest in the new state; and

(3) To submit to the constitutional convention full and detailed reports with findings and recommendations.

(4) Repealed.

(c) Repealed.

(Mar. 10, 1981, D.C. Law 3-171, § 7, 27 DCR 4732; Oct. 8, 1981, D.C. Law 4-35, § 2(f), 28 DCR 3376; Aug. 26, 1994, D.C. Law 10-167, § 2(b), 41 DCR 4895; Apr. 9, 1997, D.C. Law 11-255, § 2, 44 DCR 1271.)

Prior Codifications. — 1981 Ed., § 1-116.

Legislative history of Law 3-171. — For legislative history of D.C. Law 3-171, see Historical and Statutory Notes following § 1-121.

Legislative history of Law 4-35. — For legislative history of D.C. Law 4-35, see Historical and Statutory Notes following § 1-121.

Legislative history of Law 10-167. — For legislative history of D.C. Law 10-167, see Historical and Statutory Notes following § 1-125.

Legislative history of Law 11-255. — Law 11-255, the “Second Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Editor’s notes. — Sources of funding appropriation: Section 101(d) of Pub. L. 99-591, the D.C. Appropriations Act, 1987, provided that the District of Columbia shall identify the sources of funding for admission to statehood from its own locally-generated revenues and provided further that no revenues from federal sources shall be used to support the operations or activities of the Statehood Commission and Statehood Compact Commission.

Section 1(c) of Pub. L. 100-202, the District of Columbia Appropriations Act, 1988, provided that the District of Columbia shall identify the sources of funding for Admission to Statehood from its own locally-generated revenues and provided further that no revenues from Federal sources shall be used to support the operations or activities of the Statehood Commission and Statehood Compact Commission.

§ 1-127. Appropriations.

There is authorized to be appropriated from the General Fund of the District of Columbia an amount for the salaries and office expenses of the elected representatives to the Senate and House referred to in § 1-123(d) during the period of their service prior to the admission of the proposed new state into the union.

(Mar. 10, 1981, D.C. Law 3-171, § 8, 27 DCR 4732; Oct. 8, 1981, D.C. Law 4-35, § 2(g), 28 DCR 3376; Mar. 14, 1985, D.C. Law 5-159, § 19, 32 DCR 30.)

Prior Codifications. — 1981 Ed., § 1-117.

Legislative history of Law 3-171. — For legislative history of D.C. Law 3-171, see Historical and Statutory Notes following § 1-121.

Legislative history of Law 4-35. — For legislative history of D.C. Law 4-35, see Historical and Statutory Notes following § 1-121.

Legislative history of Law 5-159. — Law

5-159 was introduced in Council and assigned Bill No. 5-540, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 20, 1984 and December 4, 1984, respectively. Signed by the Mayor on December 10, 1984, it was assigned Act No. 5-224 and transmitted to both Houses of Congress for its review.

§ 1-128. Severability.

If any provisions or section of this measure, or the application thereof, shall in any circumstances be held invalid, such invalidity shall not affect the validity of the remainder of the provisions or applications.

(Mar. 10, 1981, D.C. Law 3-171, § 9, 27 DCR 4732.)

Prior Codifications. — 1981 Ed., § 1-118. legislative history of D.C. Law 3-171, see Historical and Statutory Notes following § 1-121.
Legislative history of Law 3-171. — For

Subpart 2—District Of Columbia Statehood Delegation Fund Commission.

§ 1-129.01. Definitions.

For the purposes of this subpart, the term:

(1) “Commission” means the District of Columbia Statehood Delegation Fund Commission.

(2) “District of Columbia Statehood Delegation” means the 2 United States Senators and the United States Representative holding office pursuant to § 1-123.

(3) “Fund” means the Statehood Delegation Fund established by § 1-129.08.

(4) “Statehood Fund” means the fund established by each United States Senator and United States Representative pursuant to § 1-123(g), and overseen by the Office of Campaign Finance.

(5) “United States Representative” means the District of Columbia public official elected pursuant to § 1-123 to the office of Representative, and charged with promoting statehood and voting rights for the citizens of the District of Columbia.

(6) “United States Senator” means either of the 2 District of Columbia public officials elected pursuant to § 1-123 to the office of Senator, and charged with promoting statehood and voting rights for the citizens of the District of Columbia.

(Mar. 10, 1981, D.C. Law 3-171, § 11, as added Mar. 16, 2005, D.C. Law 15-226, § 102, 51 DCR 10539.)

Legislative history of Law 15-226. — Law 15-226, the “District of Columbia Statehood Delegation Fund Commission Establishment and Tax Check-Off Amendment Act of 2004”, was introduced in Council and assigned Bill No. 15-575, which was referred to the Committee on Public Interest. The Bill was adopted on

first and second readings on July 13, 2004, and October 5, 2004, respectively. Signed by the Mayor on November 1, 2004, it was assigned Act No. 15-565 and transmitted to both Houses of Congress for its review. D.C. Law 15-226 became effective on March 16, 2005.

§ 1-129.02. Establishment of the District of Columbia Statehood Delegation Fund Commission; purpose; fiscal year.

(a) The District of Columbia Statehood Delegation Fund Commission is established as a body corporate and an independent instrumentality of the District of Columbia, created to effectuate the public purposes provided for in this subpart, but with a legal existence separate from that of the District government.

(b) The general purposes of the Commission are to:

(1) Provide financial assistance to the office functions of the offices of the District of Columbia Statehood Delegation;

(2) Solicit financial and in-kind contributions, grants, allocations, gifts,

bequests, and appropriations from public and private sources on behalf of the District of Columbia Statehood Delegation; and

(3) Disburse funds and other types of assistance collected by the Commission to the offices of the members of the District of Columbia Statehood Delegation.

(c) The fiscal year of the Commission shall be the fiscal year of the District government.

(Mar. 10, 1981, D.C. Law 3-171, § 12, as added Mar. 16, 2005, D.C. Law 15-226, § 102, 51 DCR 10539.)

Legislative history of Law 15-226. — For Law 15-226, see notes following § 1-129.01.

§ 1-129.03. Commissioners.

(a) The Commission shall consist of 9 voting members to be appointed as follows:

(1) Five members appointed by the Mayor;

(2) Four members appointed by the Chairman of the Council, with the advice and consent of the Council.

(b)(1) The Commission Chairman shall be chosen by the Mayor.

(2) The Commission Vice Chairman shall be chosen by the Chairman of the Council.

(3) The Commission shall elect from among its members such other officers of the Commission as it determines appropriate.

(4) Officers shall have such duties, not inconsistent with this subpart, provided in the bylaws and as otherwise determined by the Commission.

(c) Commissioners shall serve 3-year terms, except that the first members appointed by the Chairman of the Council shall serve 2-year terms. All subsequent appointees shall serve 3-year terms.

(d) Commissioners shall meet the following requirements:

(1) All shall reside in the District of Columbia;

(2) None shall be employees of the District or federal governments; and

(3) None shall concurrently:

(A) Hold office as a member of the District of Columbia Statehood Delegation; or

(B) Be employed by a member of the District of Columbia Statehood Delegation.

(e) When deemed necessary, the Mayor may remove a Commission member, no matter how appointed, for inefficiency, neglect of duty, malfeasance in office, or conduct bringing disrespect to, or impugning the character or integrity of, the Commission.

(f) A vacancy on the Commission shall be filled for the remainder of the unexpired term and in the same manner in which the original appointment was made.

(g) Commission members may continue to serve after the expiration of their term until a successor is designated. The term of the successor shall be deemed to have commenced upon the expiration of the term of the previous member.

(h) A majority of the number of Commission members serving shall constitute a quorum for the conduct of business.

(i) As soon as practicable after appointment of a majority of its members, the Commission shall adopt bylaws, and may adopt guidelines, rules, and procedures for the governance of its affairs and the conduct of its business.

(j) Commission members shall serve without compensation, but may receive travel, per diem, and other actual, reasonable, and necessary expenses incurred in the performance of their official duties as Commission members to the same extent as employees of the District government classified at a Grade 15, Step 1 of the District Service Salary Schedule for Nonunion Employees. In no event shall a Commission member receive more than \$1,000 per year. Such reimbursement shall be paid from the Fund as described in § 1-129.08(d) and shall be reported in the semiannual report described in § 1-129.11.

(k) The Commission may recruit honorary members based on criteria the Commission shall determine. The honorary members shall have no vote on the administration of the Fund or operation of the Commission.

(Mar. 10, 1981, D.C. Law 3-171, § 13, as added Mar. 16, 2005, D.C. Law 15-226, § 102, 51 DCR 10539.)

Legislative history of Law 15-226. — For Law 15-226, see notes following § 1-129.01.

§ 1-129.04. Meetings of the Commission.

(a) Upon notice to the public, the Commission shall meet at a place in the District of Columbia open and accessible to the public at the times specified in the bylaws, which shall not be less than quarterly each year, and at other times at the call of the Chairman or as additionally provided in the bylaws. Notwithstanding any other District law or rule to the contrary, the Commission may meet by any electronic means; provided, that:

(1) Each Commissioner may speak, hear, and be heard by the other Commission members; and

(2) At least one Commission member is physically located in a site in the District of Columbia which is accessible and open to the public, and that reasonable steps have been taken to allow the public to hear the discussion and deliberation of the Commission.

(b) All meetings of the Commission at which official action is to be taken shall be open to the public, as provided in § 1-207.42, except for any portion of a meeting when there is discussion of specific potential donors.

(c) The books and records of the Commission shall be open to the public, as provided in subchapter II of Chapter 5 of Title 2, except that documents regarding specific potential donors shall not be available for public inspection or copying.

(Mar. 10, 1981, D.C. Law 3-171, § 14, as added Mar. 16, 2005, D.C. Law 15-226, § 102, 51 DCR 10539.)

Legislative history of Law 15-226. — For Law 15-226, see notes following § 1-129.01.

§ 1-129.05. **Officers and employees.**

(a)(1) Chapter 6 of Title 1 shall not apply to employees of the Commission.

(2) The Executive Director of the Commission shall be a District resident and shall remain a District resident for the duration of his or her employment by the Commission. Failure to maintain District residency shall result in a forfeiture of the position.

(a-1) Notwithstanding the provisions of Unit A of Chapter 14 of Title 2, each qualified District resident applicant shall receive an additional 10-point preference over a qualified non-District resident applicant for all positions within the Commission unless the applicant declines the preference. This 10-point preference shall be in addition to, and not instead of, qualifications established for the position. All persons hired after February 6, 2008, shall submit proof of residency upon employment in a manner determined by the Commission. An applicant claiming the hiring preference under this section shall agree in writing to maintain bona fide District residency for a period of 7 consecutive years from the effective date of hire and shall provide proof of bona fide residency annually to the director of personnel of the Commission for the first 7 years of employment. Failure to maintain District residency for the consecutive 7-year period shall result in forfeiture of employment.

(b) The semiannual report described in § 1-129.11 shall describe the compensation structure and amount for any employees of the Commission, and a listing of the names of all new employees, their pay schedules, titles, and place of residence.

(c) No political test or qualification shall be used in selecting, appointing, assigning, promoting, or taking other personnel actions with respect to employees of the Commission.

(d) In carrying out its duties, the Commission may utilize contract services and, to the maximum extent possible, pro bono services; provided, that such services are itemized in the semiannual report of the Commission described in § 1-129.11.

(Mar. 10, 1981, D.C. Law 3-171, § 15, as added Mar. 16, 2005, D.C. Law 15-226, § 102, 51 DCR 10539; Feb. 6, 2008, D.C. Law 17-108, § 201, 54 DCR 10993; Mar. 25, 2009, D.C. Law 17-353, § 223(b), 56 DCR 1117.)

Effect of amendments. — D.C. Law 17-108, in subsec. (a), inserted “provided, that the Executive Director of the Commission shall be a District resident and shall remain a District resident for the duration of his or her employment by the Commission. Failure to maintain District residency shall result in a forfeiture of the position”; added subsec. (a-1); and, in subsec. (b), inserted “, a listing of the names of all new employees, their pay schedules, titles, and place of residence”.

D.C. Law 17-353, in subsec. (a), designated pars. (1) and (2), substituted a period for “, provided that” at the end of par. (1); and, in subsec. (b), inserted “and” preceding “a listing”.

Legislative history of Law 15-226. — For Law 15-226, see notes following § 1-129.01.

Legislative history of Law 17-108. — Law 17-108, the “Jobs for D.C. Residents Amendment Act of 2007”, was introduced in Council and assigned Bill No. 17-185 which was referred to the Committee on Workforce Development and Government Operations. The Bill was adopted on first and second readings on July 10, 2007, and October 2, 2007, respectively. Signed by the Mayor on October 26, 2007, it was assigned Act No. 17-172 and transmitted to both Houses of Congress for its review. D.C. Law 17-108 became effective on February 6, 2008.

Legislative history of Law 17-353. — Law 17-353, the “Technical Amendments Act of 2008”, was introduced in Council and assigned Bill No. 17-994 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 2, 2008,

and December 16, 2008, respectively. Signed by the Mayor on January 15, 2009, it was assigned Act No. 17-687 and transmitted to both Houses of Congress for its review. D.C. Law 17-353 became effective on March 25, 2009.

§ 1-129.06. Limitations on actions; representation by Attorney General of the District of Columbia.

(a) Any legal action arising from the application of any rule or procedure adopted by or prescribed by, or with respect to any determination of, the Commission pursuant to this subpart shall be filed within 90 days after the date of the occurrence of the event that is the subject of the legal proceeding.

(b) In any legal action arising from actions of the Commission, or from the Commission’s failure to act, the Commission shall be represented by the Attorney General of the District of Columbia, or counsel of its choosing.

(Mar. 10, 1981, D.C. Law 3-171, § 16, as added Mar. 16, 2005, D.C. Law 15-226, § 102, 51 DCR 10539.)

Legislative history of Law 15-226. — For Law 15-226, see notes following § 1-129.01.

§ 1-129.07. Tax-exempt status.

The Commission and its income, property, transactions, and right to do business shall be exempt from any taxation, direct or indirect, within the District, including any sales, use, franchise, gross sales or receipts, income, personal property, transfer, or excise tax. Contributions to the Fund shall be tax deductible.

(Mar. 10, 1981, D.C. Law 3-171, § 17, as added Mar. 16, 2005, D.C. Law 15-226, § 102, 51 DCR 10539.)

Legislative history of Law 15-226. — For Law 15-226, see notes following § 1-129.01.

§ 1-129.08. Establishment of Statehood Delegation Fund.

(a) There is established a Statehood Delegation Fund, which shall be operated and maintained by the Commission in accordance with generally accepted accounting principles.

(b) The Commission shall solicit contributions, appropriations, and grants to and for the benefit of the Fund from public and private sources.

(c) Except as provided in § 1-129.12, all revenues, proceeds, and monies, from whatever source, collected or received by the Commission shall be credited to the Fund and shall not, at any time, be transferred to, lapse into, or be commingled with the General Fund of the District of Columbia, or any other funds or accounts of the District of Columbia.

(d) The Commission shall pay its expenses from the Fund. Such expenses shall be for administrative purposes, for maintenance of its existence, prepa-

ration of reports pursuant to subsection (g) of this section and to § 1-129.11, and to raise funds; provided, that the Commission may not expend more than 25% of the Fund on an annual basis for its expenses.

(e)(1) Quarterly, equal disbursements shall be made from the Fund to the Statehood Fund of each member of the District of Columbia Statehood Delegation. The amount of each disbursement shall be reported in the semiannual report described in § 1-129.11.

(2) Except as provided in subsection (f) of this section or in paragraph (3) of this subsection, each quarter, the 3 equal disbursements under subsection (a) of this section shall total an amount equal to the balance of the Fund after payment of expenses pursuant to subsection (d) of this section.

(3) The Commission may disburse less than the full balance of the Fund, as provided in paragraph (2) of this subsection, if it determines, by a $\frac{2}{3}$ vote of the Commission, that disbursing the full balance would be fiscally imprudent.

(f) No disbursement shall be made under subsection (e) of this section to a member of the District of Columbia Statehood Delegation who is out of compliance with the filing and disclosure requirements of this subpart and applicable District or federal law, or who has used funds in violation of § 1-129.09, until such time as the violation has been corrected. In this instance, the $\frac{1}{3}$ disbursement held back shall become part of the corpus from which the next quarterly disbursement, pursuant to subsection (e)(1) of this section shall be made.

(g) The Commission shall transmit to the Mayor, the Council, and the Chief Financial Officer quarterly reports summarizing the revenues and expenditures of the Fund.

(h) All revenues and expenses of the Fund shall be audited annually by the Chief Financial Officer, who shall transmit the audit to the Mayor and the Council. The expenses of the annual audit shall be defrayed by the Fund.

(Mar. 10, 1981, D.C. Law 3-171, § 18, as added Mar. 16, 2005, D.C. Law 15-226, § 102, 51 DCR 10539.)

Legislative history of Law 15-226. — For Law 15-226, see notes following § 1-129.01.

§ 1-129.09. Use of funds.

(a) Except as provided in subsection (b) of this section, members of the District of Columbia Statehood Delegation may use funds provided by the Commission for any expense closely and directly related to the operation of their office.

(b)(1) Fund monies shall not be used by members of the District of Columbia Statehood Delegation for:

- (A) Campaign expenses related to any election, local or national;
- (B) Any contributions to any candidate for federal or non-federal office;
- (C) Any personal expenses, or travel expenses not closely and directly related to the office the member holds; or
- (D) Any personal salary, or stipend.

(2) The prohibition in paragraph (1)(D) of this subsection shall not limit

the ability of a member of the District of Columbia Statehood Delegation to pay salaries to employees other than the member, or to pay vendors providing services closely and directly related to the office the member holds.

(c) Semiannually, each District of Columbia Statehood Delegation member shall provide the Commission with an accounting of the expenditures made with the money received from the Commission. The date by which the accounting is due shall be set by the Commission. The accounting shall be reported in the semiannual report described in § 1-129.11.

(Mar. 10, 1981, D.C. Law 3-171, § 19, as added Mar. 16, 2005, D.C. Law 15-226, § 102, 51 DCR 10539; Apr. 7, 2006, D.C. Law 16-91, § 115, 52 DCR 10637.)

Effect of amendments. — D.C. Law 16-91, in the section heading, validated a previously made technical correction.

Legislative history of Law 16-91. — For Law 16-91, see notes following § 1-301.45.

Legislative history of Law 15-226. — For Law 15-226, see notes following § 1-129.01.

§ 1-129.10. Prohibition on political activity.

The Commission shall not expend funds:

(1) To influence legislation, other than in connection with testimony by a Commission member, officer, or employee of the Commission before a committee of the Congress or the Council, or in response to a written request from a member of Congress or the Council;

(2) To influence the outcome of any election, national or local;

(3) To political parties; or

(4) To other organizations of any kind to support the lobbying efforts of any group or organization.

(Mar. 10, 1981, D.C. Law 3-171, § 20, as added Mar. 16, 2005, D.C. Law 15-226, § 102, 51 DCR 10539.)

Legislative history of Law 15-226. — For Law 15-226, see notes following § 1-129.01.

§ 1-129.11. Reports.

Semiannually, the Commission shall submit to the Mayor, the Chairman of the Council, and the Chairman of the District of Columbia Board of Election and Ethics, a detailed written report of its activities, revenues, and expenditures (including the full name, home address, occupation, employer, and amount of each contributor of each financial contribution, and the source, value, and form of each other gift, grant, bequest, or appropriation to the Fund), other information required by this subpart, and any other information deemed appropriate by the Commission. The Commission shall make each report available to the general public upon request.

(Mar. 10, 1981, D.C. Law 3-171, § 21, as added Mar. 16, 2005, D.C. Law 15-226, § 102, 51 DCR 10539.)

Legislative history of Law 15-226. — For Law 15-226, see notes following § 1-129.01.

§ 1-129.12. Dissolution; termination of affairs.

(a) Upon dissolution of the Commission, title to real and personal property of the Commission shall vest in the District. No property, assets, or earnings of the Commission shall at any time inure to any private person or entity.

(b) The Commission may be dissolved by a vote of a majority of the Commission and approval by act of the Council; provided, that adequate provision has been made for all debts and obligations of the Commission.

(Mar. 10, 1981, D.C. Law 3-171, § 22, as added Mar. 16, 2005, D.C. Law 15-226, § 102, 51 DCR 10539.)

Legislative history of Law 15-226. — For Law 15-226, see notes following § 1-129.01.

Part B

HONORARIA LIMITATIONS.

§ 1-131. Application of honoraria limitations.

Notwithstanding the provisions of § 1-135, the honoraria limitations imposed by part H of subchapter I of Chapter 11 of this title shall apply to a Senator or Representative elected pursuant to § 1-123(d)(1), only if the salary of the Senator or Representative is supported by public revenues.

(June 8, 1990, D.C. Law 8-135, § 4, 37 DCR 2616.)

Prior Codifications. — 1981 Ed., § 1-113a.

Legislative history of Law 8-135. — Law 8-135 was introduced in Council and assigned Bill No. 8-488, which was referred to the Committee on Government Operations. The Bill

was adopted on first and second readings on February 27, 1990 and March 27, 1990, respectively. Signed by the Mayor on April 13, 1990, it was assigned Act No. 8-191 and transmitted to both Houses of Congress for its review.

§ 1-132. Approval and ratification of Constitution.

No proposed Constitution for the State of New Columbia shall take effect as the Constitution of the State of New Columbia until approved by the Congress of the United States and ratified in a referendum by a majority of the registered qualified electors of the District of Columbia voting thereon.

(June 24, 1987, D.C. Law 7-8, § 3, 34 DCR 3057.)

Prior Codifications. — 1981 Ed., § 1-113.1.

Legislative history of Law 7-8. — Law 7-8, the “Constitution for the State of New Columbia Approval Act of 1987,” was introduced in Council and assigned Bill No. 7-154, which was

referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 14, 1987 and May 5, 1987, respectively. Signed by the Mayor on May 6, 1987, it was assigned Act No. 7-19 and transmitted to both Houses of Congress for its review.

Part C

CAMPAIGN FINANCE REFORM.

§ 1-135. Application of Campaign Finance Reform and Conflict of Interest Act.

All provisions of the District of Columbia Campaign Finance Reform and Conflict of Interest Act, subchapter III of Chapter 11A of this Title, which apply to the election of and service of the Mayor of the District of Columbia shall apply to persons who are candidates or elected to serve as United States Senators and United States Representative pursuant to this initiative.

(Aug. 14, 1982, D.C. Law 4-138, § 3, 29 DCR 2761; Apr. 27, 2012, D.C. Law 19-124, § 501(m), 59 DCR 1862.)

Section references. — This section is referred to in § 1-131.

Prior Codifications. — 1981 Ed., § 1-119.

Effect of amendments. — D.C. Law 19-124 substituted “subchapter III of Chapter 11A of this title” for “subchapter I of Chapter 11 of this title”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 401(m) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 4-138. — Law 4-138, the “Statehood Convention Procedural Amendments Act of 1982,” was introduced in Council and assigned Bill No. 4-450, which was

referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 25, 1982 and June 8, 1982, respectively. Signed by the Mayor on June 21, 1982, it was assigned Act No. 4-204 and transmitted to both Houses of Congress for its review.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

Expiration of Law 4-138. — Section 4 of D.C. Law 4-138 provided that the provisions of § 1-119 [§ 1-135, 2001 Ed.] shall expire 30 days after the date that the provisions of the Federal Election Campaign Act of 1971 (2 U.S.C. § 431 et seq.) are determined by appropriate federal authorities to apply to the Senators and Representative from the District of Columbia.

Part D

51ST STATE COMMISSION.

§ 1-136.01. Establishment of the 51st State Commission. [Not funded].

[Not funded].

(Mar. 23, 2010, D.C. Law 18-127, § 2, 57 DCR 1183.)

Legislative history of Law 18-127. — Law 18-127, the “51st State Commission Establishment Amendment Act of 2010”, was introduced in Council and assigned Bill No. 18-177, which was referred to the Committee on Aging and Community Affairs. The bill was adopted on first and second readings on December 15,

2009, and January 5, 2010, respectively. Signed by the Mayor on January 25, 2010, it was assigned Act No. 18-289 and transmitted to both Houses of Congress for its review. D.C. Law 18-127 became effective on March 23, 2010.

Editor’s notes. — Section 4 of D.C. Law

18-127 provided that this act shall apply upon inclusion of its fiscal effect in an approved budget and financial plan.

The Budget Director of the Council of the District of Columbia has determined, as of

February 15, 2012, that the fiscal effect of Law 18-127 has not been included in an approved budget and financial plan. Therefore, the provisions of this section, enacted by Law 18-127, are not in effect.

§ 1-136.02. Operations of the 51st State Commission. [Not funded].

[Not funded].

(Mar. 23, 2010, D.C. Law 18-127, § 3, 57 DCR 1183.)

Legislative history of Law 18-127. — For Law 18-127, see notes following § 1-136.01.

Editor's notes. — Section 4 of D.C. Law 18-127 provided that this act shall apply upon inclusion of its fiscal effect in an approved budget and financial plan.

The Budget Director of the Council of the

District of Columbia has determined, as of February 15, 2012, that the fiscal effect of Law 18-127 has not been included in an approved budget and financial plan. Therefore, the provisions of this section, enacted by Law 18-127, are not in effect.

§ 1-136.03. Applicability. [Not funded].

[Not funded].

(Mar. 23, 2010, D.C. Law 18-127, § 4, 57 DCR 1183.)

Emergency legislation. — For temporary (90 day) addition of sections, see §§ 1081 to 1089 of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) addition of sections, see §§ 1081 to 1089 of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 18-127. — For Law 18-127, see notes following § 1-136.01.

Editor's notes. — Section 4 of D.C. Law 18-127 provided that this act shall apply upon inclusion of its fiscal effect in an approved budget and financial plan.

The Budget Director of the Council of the District of Columbia has determined, as of February 15, 2012, that the fiscal effect of Law 18-127 has not been included in an approved budget and financial plan. Therefore, the provisions of this section, enacted by Law 18-127, are not in effect.

Subchapter III. District of Columbia Flag.

Part A

GENERAL.

§ 1-141. Findings.

The Council of the District of Columbia finds that:

(1) Section 2 of a joint resolution to codify and emphasize existing rules and customs pertaining to the display and use of the flag of the United States of America (36 U.S.C. § 174) [revised; now see 4 U.S.C. § 6] addresses the method, time, and places for the display of the United States flag:

(A) The flag should be hoisted briskly and lowered ceremoniously.

(B) It is the universal custom to display the flag only from sunrise to

sunset on buildings and stationary flagstaffs in the open. When a patriotic effect is desired, however, the flag may be displayed 24 hours a day if properly illuminated during the hours of darkness.

(C) The flag should not be displayed on days when the weather is inclement, except when an all-weather flag is displayed.

(D) The flag should be displayed on all days, especially on those days designated as federal and state holidays.

(E) The flag should be displayed daily on or near the main administration building of every public institution.

(F) The flag should be displayed in or near every polling place on election days.

(G) The flag should be displayed during school days in or near every schoolhouse.

(2) The display of the District of Columbia flag will inculcate a spirit of patriotism in our citizens.

(July 1, 1982, D.C. Law 4-121, § 2, 29 DCR 2072.)

Prior Codifications. — 1981 Ed., § 1-121.

Emergency legislation. — For temporary (90 day) establishment of advisory commission, see § 2 of Flag Design Advisory Commission Emergency Act of 2002 (D.C. Act 14-424, July 17, 2002, 49 DCR 7627).

For temporary (90 day) establishment of a Flag Design Advisory Commission, see § 2 of Flag Design Advisory Commission Congressional Review Emergency Act of 2002 (D.C. Act 14-538, December 2, 2002, 49 DCR 11653).

For temporary (90 day) establishment of the Flag Design Advisory Commission, see § 2 of Flag Design Advisory Commission Congressional

Review Emergency Amendment Act of 2003 (D.C. Act 15-6, January 27, 2003, 50 DCR 1455).

Legislative history of Law 4-121. — Law 4-121, the “District of Columbia Flag Display Act of 1982,” was introduced in Council and assigned Bill No. 4-365, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 6, 1982 and April 27, 1982, respectively. Signed by the Mayor on May 11, 1982, it was assigned Act No. 4-184 and transmitted to both Houses of Congress for its review.

§ 1-142. Requirements as to display.

The flag of the District of Columbia shall be displayed in the same manner, at the same time, and on the same occasions as the flag of the United States is displayed in the District of Columbia pursuant to and consistent with federal law.

(July 1, 1982, D.C. Law 4-121, § 3, 29 DCR 2072.)

Prior Codifications. — 1981 Ed., § 1-122.

Legislative history of Law 4-121. — For

legislative history of D.C. Law 4-121, see Historical and Statutory Notes following § 1-141.

§ 1-143. Staff to be used.

Wherever practicable, the District of Columbia flag shall be flown on the same staff as the United States flag.

(July 1, 1982, D.C. Law 4-121, § 4, 29 DCR 2072.)

Prior Codifications. — 1981 Ed., § 1-123.

Legislative history of Law 4-121. — For

legislative history of D.C. Law 4-121, see Historical and Statutory Notes following § 1-141.

§ 1-144. Inside public buildings.

The flag of the District of Columbia shall be displayed inside all public buildings whenever and wherever the flag of the United States is displayed.

(July 1, 1982, D.C. Law 4-121, § 5, 29 DCR 2072.)

Prior Codifications. — 1981 Ed., § 1-124. legislative history of D.C. Law 4-121, see Historical and Statutory Notes following § 1-141.
Legislative history of Law 4-121. — For

§ 1-145. Notice to commercial property owners.

The Department of Finance and Revenue shall give notice of the provisions of this subchapter in each real property tax bill sent to commercial property owners in the next mailing immediately following July 1, 1982.

(July 1, 1982, D.C. Law 4-121, § 6, 29 DCR 2072.)

Prior Codifications. — 1981 Ed., § 1-125.
Legislative history of Law 4-121. — For legislative history of D.C. Law 4-121, see Historical and Statutory Notes following § 1-141.
References in text. — Pursuant to the Office of the Chief Financial Officer's "Notice of Public Interest" published in the April 18, 1997, issue of the District of Columbia Register (44 DCR 2345) the Office of Tax and Revenue assumed all of the duties and functions previously performed by the Department of Finance and Revenue, as set forth in Commissioner's Order 69-96, dated March 7, 1969. This action was made effective January 22, 1997, nunc pro tunc.

Part B

DISTRICT OF COLUMBIA FLAG ADOPTION AND DESIGN.

§ 1-151. District of Columbia official flag.

The flag of the District of Columbia shall be 3 red stars in the upper portion of the flag (the chief), with 2 red horizontal bars on a field of white. All proportions described in this section are expressed in relation to the flag's vertical dimension (the hoist). The chief shall be $\frac{3}{10}$ of the hoist, the horizontal red bars shall be $\frac{2}{10}$, the base and white space between the 2 bars shall be $\frac{2}{10}$ and $\frac{1}{10}$, respectively. The red stars shall be $\frac{2}{10}$ in diameter, and shall be spaced equidistant in the fly. The length of the fly shall depend on the proportions of the flag upon which this design may be displayed.

(Mar. 25, 2003, D.C. Law 14-237, § 2, 49 DCR 10485.)

Prior Codifications. — 2001 Ed., § 1-171.
Legislative history of Law 14-237. — Law 14-237, the "District of Columbia Flag Adoption and Design Act of 2002", was introduced in Council and assigned Bill No. 14-647, which was referred to the Committee on the Whole. The Bill was adopted on first and second readings on July 2, 2002, and October 1, 2002, respectively. Signed by the Mayor on October 23, 2002, it was assigned Act No. 14-516 and transmitted to both Houses of Congress for its review. D.C. Law 14-237 became effective on March 25, 2003.

§ 1-152. Inclusion of “DC” and “No Taxation Without Representation” within District of Columbia flag.

(a) After the design adopted under subsection (b) of this section becomes effective, the flag of the District of Columbia shall temporarily contain the language “DC” and “No Taxation Without Representation”.

(b) The placement and design of the language prescribed in subsection (a) of this section shall be established by act of the Council.

(c) The flag adopted pursuant to § 1-151 and subsection (b) of this section shall be flown officially as of 90 days following the effective date of the act specified in subsection (b) of this section.

(d) The language prescribed in subsection (a) of this section shall be removed from the flag when District of Columbia registered voters are able to vote for 2 Senators and one Representative with full rights and privileges in the Congress of the United States.

(e) The language prescribed in subsection (a) of this section shall not be required in instances where a reproduction of the flag is placed as a symbol on motor vehicles, District of Columbia government letterhead, or other objects.

(Mar. 25, 2003, D.C. Law 14-237, § 3, 49 DCR 10485.)

Prior Codifications. — 2001 Ed., § 1-172.

Legislative history of Law 14-237. — For Law 14-237, see notes following § 1-151.

§ 1-153. Flag Design Advisory Commission.

(a) There is established a Flag Design Advisory Commission (“Commission”) with the purpose of preparing a recommendation for the placement and design of the language “DC” and “No Taxation Without Representation” on the District of Columbia flag.

(b) The Commission shall be composed of 7 members: the Mayor, or his or her designee; the Chairman of the Council, or his or her designee; the Chairman of the Council’s Subcommittee on Labor, Voting Rights, and Redistricting, or his or her designee; 2 persons appointed by the Mayor; and 2 persons appointed by the Chairman of the Council. The Chairman of the Council shall designate the Commission Chairman. All appointments shall be made within 30 days of March 25, 2003. Vacancies shall be filled in the same manner as the initial appointment was made.

(c) The Commission shall submit its recommendation in the form of a report to the Council no later than 4 months after March 25, 2003. The Commission shall approve its recommendation by a majority vote.

(d) Costs of the Commission and its members shall be borne by the members or paid through private contributions. The Commission is authorized to receive private-sector contributions. The Commission is authorized to use space and supplies owned or rented by the District of Columbia government, and to use staff loaned from the Council or detailed from the Mayor for such purposes consistent with this subchapter as the Commission may determine.

(e) The Commission shall have the authority to create and operate under its own rules of procedure.

(f) The books and records of the Commission shall be public documents.

(Mar. 25, 2003, D.C. Law 14-237, § 4, 49 DCR 10485.)

Prior Codifications. — 2001 Ed., § 1-173.

Legislative history of Law 14-237. — For Law 14-237, see notes following § 1-151.

§ 1-154. Use of donations and grants for flag replacement.

The Mayor is authorized to solicit, receive, accept, and expend donations or grants from private sources to defray the costs of replacing existing District of Columbia flags with flags that include the language prescribed in § 1-152(a).

(Mar. 25, 2003, D.C. Law 14-237, § 5, 49 DCR 10485.)

Prior Codifications. — 2001 Ed., § 1-174.

Legislative history of Law 14-237. — For Law 14-237, see notes following § 1-151.

Subchapter IV. Official Dinosaur of the District of Columbia.

§ 1-161. Capitalsaurus dinosaur.

(a) The Capitalsaurus dinosaur was discovered in January 1898, at First and F Streets, S.E., in the District of Columbia by workmen during a sewer connection project, and is the only known specimen of its kind in the world.

(b) The Capitalsaurus was a large meat eating reptile which may be an ancestor of the *T. (tyrannosaurus) rex*.

(c) About 110 million years ago, the Capitalsaurus lived in the District of Columbia with many other dinosaurs including herbivores.

(d) During the lifetime of the Capitalsaurus, the District of Columbia resembled the bayou country of southern Louisiana.

(e) The Capitalsaurus fossil discovered in 1898 is now at the Smithsonian Museum of Natural History in the type room.

(f) The Capitalsaurus is unique to the District of Columbia because its fossil remains have not been discovered anywhere else in the world.

(g) The vertebra of the dinosaur was given to the Smithsonian Institution as a gift by J.K. Murphy on January 28, 1898, and was recorded as accession number 33153 and specimen number NMNH 3049.

(h) District of Columbia Public School students have been studying the Capitalsaurus and many other dinosaurs from this area for years.

(i) The students have also helped to dig up dinosaurs fossils which are now part of the Smithsonian's permanent collection.

(j) The Capitalsaurus shall be the official Dinosaur of the District of Columbia.

(Sept. 30, 1998, D.C. Law 12-155, § 2, 45 DCR 4476; Apr. 20, 1999, D.C. Law

12-264, § 2, 46 DCR 2118; Oct. 20, 1999, D.C. Law 13-41, § 4, 46 DCR 6552; Apr. 12, 2000, D.C. Law 13-91, § 102, 47 DCR 520.)

Prior Codifications. — 1981 Ed., § 1-131.

Effect of amendments. — D.C. Law 13-41, in subsec. (g), substituted “specimen NMNH 3049” for “specimen NMNH 3409”.

D.C. Law 13-91, in subsec. (g), inserted “number” preceding “NMNH”.

Legislative history of Law 12-155. — Law 12-155, the “Official Dinosaur Act of 1998,” was introduced in Council and assigned Bill No. 12-538, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 5, 1998, and June 2, 1998, respectively. Signed by the Mayor on June 10, 1998, it was assigned Act No. 12-382 and transmitted to both Houses of Congress for its review. D.C. Law 12-155 became effective on September 30, 1998.

Legislative history of Law 12-264. — Law 12-264, the “Technical Amendments Act of 1998,” was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998 and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was

assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

Legislative history of Law 13-41. — Law 13-41, the “Designation of Capitalsaurus Court and Technical Correction Amendment Act of 1999,” was introduced in Council and assigned Bill No. 13-170, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 1, 1999, and July 6, 1999, respectively. Signed by the Mayor on July 19, 1999, it was assigned Act No. 13-114 and transmitted to both Houses of Congress for its review. D.C. Law 13-41 became effective on October 20, 1999.

Legislative history of Law 13-91. — Law 13-91, the “Technical Amendments Act of 1999,” was introduced in Council and assigned Bill No. 13-435, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 2, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000.

Subchapter V. Official Fruit of the District of Columbia.

§ 1-171. Cherry designated official fruit.

(a) Twenty-six states have an official fruit, 2 of which picked their official fruit based on suggestions from children.

(b) Washington, D.C. is named in honor of our first president, George Washington, who is symbolically associated with the cherry because of the well-known tale of the president, as a child, and a certain cherry tree, the moral of which was the importance of honesty.

(c) Every year, the District of Columbia holds the Cherry Blossom Festival, which includes a parade and other events celebrating the beauty of the cherry tree and the original gift, in 1912, of 3,000 cherry trees from the city of Tokyo to the people of Washington, D.C.

(d) Washington, D.C. is more closely associated with the cherry than any other fruit.

(e) The matter of an official fruit was studied by the students in Mr. Bunton’s class at Bowen Elementary School, and they proposed that the cherry be named the official fruit of the District of Columbia.

(f) The District of Columbia Board of Education supports the students.

(g) The cherry is hereby designated the official fruit of the District of Columbia.

(Sept. 29, 2006, D.C. Law 16-171, § 2, 53 DCR 6227.)

Legislative history of Law 16-171. — Law 16-171, the “Official Fruit of the District of Columbia Act of 2006”, was introduced in Council and assigned Bill No. 16-721 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 6, 2006, and July 11, 2006, respec-

tively. Signed by the Mayor on July 18, 2006, it was assigned Act No. 16-440 and transmitted to both Houses of Congress for its review. D.C. Law 16-171 became effective on September 29, 2006.

Editor’s notes. — Former § 1-171 has been recodified as § 1-151.

§ 1-172. Inclusion of “DC” and “No Taxation Without Representation” within District of Columbia flag. [Transferred].

Recodified as § 1-152.

(Mar. 25, 2003, D.C. Law 14-237, § 3, 49 DCR 10485.)

§ 1-173. Flag Design Advisory Commission. [Transferred].

Recodified as § 1-153.

(Mar. 25, 2003, D.C. Law 14-237, § 4, 49 DCR 10485.)

§ 1-174. Use of donations and grants for flag replacement. [Transferred].

Recodified as § 1-154.

(Mar. 25, 2003, D.C. Law 14-237, § 5, 49 DCR 10485.)

Subchapter VI. District of Columbia Emancipation Day Parade and Fund.

§ 1-181. Definitions.

For the purposes of this subchapter, the term:

(1) “Emancipation Day Parade” means the parade, and associated activities, including the provision of food, snacks, entertainment, and non-alcoholic beverages to the general public, participants, and District government employees, held to celebrate and commemorate District of Columbia Emancipation Day.

(2) “Fund” means the Emancipation Day Fund.

(Mar. 16, 2005, D.C. Law 15-240, § 2, 51 DCR 11225; Feb. 27, 2008, D.C. Law 17-110, § 2(a), 55 DCR 223.)

Effect of amendments. — D.C. Law 17-110, in par. (1), substituted “activities, including the provision of food, snacks, entertainment, and non-alcoholic beverages to the general public, participants, and District government employees, held to celebrate” for “activities, held to celebrate”.

Temporary Addition of Section. — For temporary (225 day) addition, see § 2 of Dis-

trict of Columbia Emancipation Day Fund Temporary Act of 2002 (D.C. Law 14-125, May 2, 2002, law notification 49 DCR 4400).

For temporary (225 day) addition, see § 2 of Emancipation Day Fund Temporary Act of 2003 (D.C. Law 15-9, June 5, 2003, law notification 50 DCR 4873).

For temporary (225 day) addition, see § 2 of District of Columbia Emancipation Day Parade

and Fund Temporary Act of 2004 (D.C. Law 15-138, April 22, 2004, law notification 51 DCR 4922).

Emergency legislation. — For temporary (90 day) addition, see § 2 of District of Columbia Emancipation Day Fund Emergency Act of 2002 (D.C. Act 14-263, January 30, 2002, 49 DCR 1443).

For temporary (90 day) addition, see § 2 of Emancipation Day Fund Emergency Act of 2003 (D.C. Act 15-17, February 25, 2003, 50 DCR 1948).

For temporary (90 day) addition, see § 2 of District of Columbia Emancipation Day Parade and Fund Emergency Act of 2004 (D.C. Act 15-343, January 29, 2004, 51 DCR 1827).

For temporary (90 day) addition, see § 2 of District of Columbia Emancipation Day Parade and Fund Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-660, December 29, 2004, 52 DCR 797).

For temporary (90 day) addition, see § 2 of District of Columbia Emancipation Day Parade and Fund Congressional Review Emergency Act of 2005 (D.C. Act 16-61, March 17, 2005, 52 DCR 3197).

Legislative history of Law 15-240. — Law 15-240, the “District of Columbia Emancipation Day Parade and Fund Act of 2004”, was introduced in Council and assigned Bill No. 15-670, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 5, 2004, and November 9, 2004, respectively. Signed by the Mayor on November 30, 2004, it was assigned Act No. 15-597 and transmitted to both Houses of Congress for its review. D.C. Law 15-240 became effective on March 16, 2005.

Legislative history of Law 17-110. — Law 17-110, the “District of Columbia Emancipation Day Parade Clarification Amendment Act of 2007”, was introduced in Council and assigned Bill No. 17-187 which was referred to the Committee on Workforce Development and Government Operations. The Bill was adopted on first and second readings on November 6, 2007, and December 11, 2007, respectively. Signed by the Mayor on December 27, 2007, it was assigned Act No. 17-228 and transmitted to both Houses of Congress for its review. D.C. Law 17-110 became effective on February 27, 2008.

§ 1-182. Establishment of Emancipation Day Parade.

There is established the Emancipation Day Parade, to annually celebrate and commemorate District of Columbia Emancipation Day.

(Mar. 16, 2005, D.C. Law 15-240, § 3, 51 DCR 11225.)

Temporary Addition of Section. — For temporary (225 day) additions, see §§ 3, 5 of District of Columbia Emancipation Day Fund Temporary Act of 2002 (D.C. Law 14-125, May 2, 2002, law notification 49 DCR 4400).

For temporary (225 day) additions, see §§ 3, 5 of Emancipation Day Fund Temporary Act of 2003 (D.C. Law 15-9, June 5, 2003, law notification 50 DCR 4873).

For temporary (225 day) addition, see § 3 of District of Columbia Emancipation Day Parade and Fund Temporary Act of 2004 (D.C. Law 15-138, April 22, 2004, law notification 51 DCR 4922).

Emergency legislation. — For temporary (90 day) addition, see §§ 3, 5 of District of Columbia Emancipation Day Fund Emergency

Act of 2002 (D.C. Act 14-263, January 30, 2002, 49 DCR 1443).

For temporary (90 day) addition, see §§ 3, 5 of Emancipation Day Fund Emergency Act of 2003 (D.C. Act 15-17, February 25, 2003, 50 DCR 1948).

For temporary (90 day) addition, see §§ 3, 5 of District of Columbia Emancipation Day Parade and Fund Emergency Act of 2004 (D.C. Act 15-343, January 29, 2004, 51 DCR 1827).

For temporary (90 day) addition, see §§ 3, 5 of District of Columbia Emancipation Day Parade and Fund Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-660, December 29, 2004, 52 DCR 797).

Legislative history of Law 15-240. — For Law 15-240, see notes following § 1-181.

§ 1-183. Emancipation Day Fund.

(a) There is established the Emancipation Day Fund (“Fund”) to receive monies for the purposes of funding the Emancipation Day Parade and activities associated with the celebration and commemoration of District of Columbia Emancipation Day.

(b) The monies in the Fund shall not be a part of, or lapse into, the General Fund of the District of Columbia or any other fund of the District.

(c) By August 1st of each year, the Secretary of the District of Columbia shall submit a report to the Council that shall include a specific accounting of the expenditure of money in the Fund and any remaining balance. The report shall include:

- (1) The name of any donors or list of anonymous contributions;
- (2) The amount of each contribution;
- (3) A description of any donated property;
- (4) A description of the use of monies for presenting the Emancipation Day Parade; and

(5) Costs of parade-related programs, activities, purchases, and functions for which the money have been expended.

(d) Monies shall only be expended from the Fund for the administration of the Emancipation Day Parade. A minimum of 15% of the monies in the Fund shall be used to purchase and provide educational materials. The Fund may be used to purchase food, snacks, entertainment, and non-alcoholic beverages for the general public, participants, and District government employees to celebrate Emancipation Day.

(Mar. 16, 2005, D.C. Law 15-240, § 4, 51 DCR 11225; Feb. 27, 2008, D.C. Law 17-110, § 2(b), 55 DCR 223.)

Effect of amendments. — D.C. Law 17-110, in subsec. (c)(5), substituted “activities, purchases, and functions” for “activities, and functions”; and, in subsec. (d) added the second and third sentences.

Temporary Addition of Section. — For temporary (225 day) addition, see § 4 of District of Columbia Emancipation Day Fund Temporary Act of 2002 (D.C. Law 14-125, May 2, 2002, law notification 49 DCR 4400).

For temporary (225 day) addition, see § 4 of Emancipation Day Fund Temporary Act of 2003 (D.C. Law 15-9, June 5, 2003, law notification 50 DCR 4873).

For temporary (225 day) addition, see § 4 of District of Columbia Emancipation Day Parade and Fund Temporary Act of 2004 (D.C. Law 15-138, April 22, 2004, law notification 51 DCR 4922).

Emergency legislation. — For temporary (90 day) addition, see § 4 of District of Columbia Emancipation Day Fund Emergency Act of 2002 (D.C. Act 14-263, January 30, 2002, 49 DCR 1443).

For temporary (90 day) addition, see § 4 of Emancipation Day Fund Emergency Act of 2003 (D.C. Act 15-17, February 25, 2003, 50 DCR 1948).

For temporary (90 day) addition, see § 4 of District of Columbia Emancipation Day Parade and Fund Emergency Act of 2004 (D.C. Act 15-343, January 29, 2004, 51 DCR 1827).

For temporary (90 day) use of prior budgeted reserve funds for Emancipation Day activities, see § 2 of Emancipation Day Reserve Fund Allocation Emergency Act of 2004 (D.C. Act 15-641, November 30, 2004, 52 DCR 1261).

For temporary (90 day) addition, see § 4 of District of Columbia Emancipation Day Parade and Fund Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-660, December 29, 2004, 52 DCR 797).

Legislative history of Law 15-240. — For Law 15-240, see notes following § 1-181.

Legislative history of Law 17-110. — For Law 17-110, see notes following § 1-181.

DISTRICT OF COLUMBIA HOME RULE

CHAPTER 2. DISTRICT OF COLUMBIA HOME RULE.

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- 1-201.02. Purposes.
- 1-201.03. Definitions.

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- 1-207.01. Referendum.
- 1-207.02. Board of Elections authority.

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PART G

Effective Dates

- 1-207.71. Effective dates.

*Subchapter I. Short Title, Purposes, and Definitions.***§ 1-201.01. Short title.**

This chapter may be cited as the "District of Columbia Home Rule Act".

(Dec. 24, 1973, 87 Stat. 777, Pub. L. 93-198, title I, § 101; Aug. 5, 1997, 111 Stat. 251, Pub. L. 105-33, title XI, § 11717(a).)

CASE NOTES**Jurisdiction.**

Federal district court was precluded from exercising jurisdiction over action brought by members of unincorporated businesses (UB) seeking declaratory judgment that imposition

of District of Columbia's UB franchise tax on them, as non-resident members of a UB, was unlawful under the federal Constitution and District of Columbia's Home Rule Act; District of Columbia's jurisdiction granting code provi-

sions vested its Superior Court with exclusive jurisdiction regarding review of the validity of amount of District of Columbia tax assessments, including federal and constitutional issues, and, while business members argued they were challenging the imposition of a tax, rather than the assessment, the common legal defini-

tion of "assessment" included imposition of a tax, and the members had to be challenging their actual tax liability as assessed in order to have standing. *Fernebok v. District of Columbia*, 534 F.Supp.2d 25, 2008 U.S. Dist. LEXIS 5069 (2008), affirmed by 2008 U.S. App. LEXIS 13611 (D.C. Cir. June 24, 2008).

§ 1-201.02. Purposes.

(a) Subject to the retention by Congress of the ultimate legislative authority over the nation's capital granted by article I, § 8, of the Constitution, the intent of Congress is to delegate certain legislative powers to the government of the District of Columbia; authorize the election of certain local officials by the registered qualified electors in the District of Columbia; grant to the inhabitants of the District of Columbia powers of local self-government; modernize, reorganize, and otherwise improve the governmental structure of the District of Columbia; and, to the greatest extent possible, consistent with the constitutional mandate, relieve Congress of the burden of legislating upon essentially local District matters.

(b) Congress further intends to implement certain recommendations of the Commission on the Organization of the Government of the District of Columbia and take certain other actions irrespective of whether the charter for greater self-government provided for in subchapter IV of this chapter is accepted or rejected by the registered qualified electors of the District of Columbia.

(Dec. 24, 1973, 87 Stat. 777, Pub. L. 93-198, title I, § 102.)

Cross references. — Downtown sports and entertainment arena, financing, see § 47-2752.

Mayor, subpoena power, see § 1-301.21.

United States Congress, reservation of authority, see §§ 1-206.01, 1-206.02, 1-206.03, and 1-206.04.

Water and sewer authority, general powers and purpose, see §§ 34-2202.02 and 34-2202.03.

Section references. — This section is referred to in § 47-340.01.

Prior Codifications. — 1981 Ed., § 1-201. 1973 Ed., § 1-121.

Editor's notes. — Section 11717(b) of Title XI of Pub. L. 105-33, 111 Stat. 786, the National Capital Revitalization and Self-Government Improvement Act of 1997, provided as follows:

"(b) References In Law—Any reference in law or regulation to the District of Columbia Self-Government and Governmental Reorganization Act shall be deemed to be a reference to the District of Columbia Home Rule Act."

CASE NOTES

ANALYSIS

Allocation and appropriation of funds.

Construction and application.

Initiative and referendum.

Local government.

Severability of provisions.

Allocation and appropriation of funds.

By-pass approach permitting allocation of revenues for specific purposes by initiative, but requiring further legislative action in order to appropriate those revenues, is deficient as applied to District of Columbia in which allocation

and appropriation functions are divided between Congress and District of Columbia Council. D.C. Code 1981, §§ 1-201(a), 1-227, 1-227(e), 1-229(a), 47-301, 47-301(a)(1, 3-6), 47-313(c, d), 47-304, 47-305, 47-3405. *Hessey v. District of Columbia Bd. of Elections & Ethics*, 601 A.2d 3, 1991 D.C. App. LEXIS 318 (1991).

Construction and application.

Authority given to District of Columbia in 1973 in Home Rule Act (HRA) over "all rightful subjects of legislation" gave power to District to enact laws regulating firearms and superseded qualified grant to District of specific authority

to regulate firearms in 1906 Act; insofar as 1906 Act remained effective, it served only to clarify that new District of Columbia Council was body responsible for function of regulating firearms. *Heller v. District of Columbia*, 670 F.3d 1244, 2011 U.S. App. LEXIS 20130 (C.A.D.C. 2011).

Under Self-Government and Governmental Reorganization Act electorate does not have same power by initiative as Congress to enact legislation for District of Columbia; Congress has not delegated that power to electorate or council. D.C. Code 1981, § 1-201 et seq. *Hessey v. District of Columbia Bd. of Elections & Ethics*, 601 A.2d 3, 1991 D.C. App. LEXIS 318 (1991).

Neither District of Columbia Self Government Act nor District of Columbia Comprehensive Plan Act of 1984 imposed moratorium on private real estate development permitted as a matter of right under applicable zoning regulations, even if regulations may have been inconsistent with District's comprehensive plan. D.C. Code 1981, §§ 1-201 et seq., 1-245 et seq. *Tenley & Cleveland Park Emergency Committee v. District of Columbia Bd. of Zoning Adjustment*, 550 A.2d 331, 1988 D.C. App. LEXIS 206 (1988), writ of certiorari denied by 489 U.S. 1082, 109 S. Ct. 1539, 103 L. Ed. 2d 843, 1989 U.S. LEXIS 1460, 57 U.S.L.W. 3620 (1989).

If the garnishment of District of Columbia workers' salaries is to be permitted, then that relief lies within the province of the legislative branch—whether the Congress or the District Council—not the courts. *Allied Capital Lending Corp. v. Stubbs*, 123 WLR 389 (Super. Ct. 1995).

Initiative and referendum.

Amendment to District of Columbia Charter,

such as right of initiative, cannot be viewed in vacuum, but must be construed in light of statutory scheme established by charter in District of Columbia Self-Government and Governmental Reorganization Act. D.C. Code 1981, § 1-201 et seq. *Hessey v. District of Columbia Bd. of Elections & Ethics*, 601 A.2d 3, 1991 D.C. App. LEXIS 318 (1991).

Local government.

District of Columbia Council's interpretation of its responsibilities under Home Rule Act is entitled to great deference. D.C. Code 1981, § 1-201 et seq. *Tenley & Cleveland Park Emergency Committee v. District of Columbia Bd. of Zoning Adjustment*, 550 A.2d 331, 1988 D.C. App. LEXIS 206 (1988), writ of certiorari denied by 489 U.S. 1082, 109 S. Ct. 1539, 103 L. Ed. 2d 843, 1989 U.S. LEXIS 1460, 57 U.S.L.W. 3620 (1989).

Severability of provisions.

Legislative history established that the one House of Congress veto provision of the District of Columbia Home Rule Act, D.C. Code 1981, §§ 1-201 to 1-295, was not central to passage of that act, and that the veto provision was thus severable upon being declared unconstitutional. *Gary v. United States*, 499 A.2d 815, 1985 D.C. App. LEXIS 520 (1985), writ of certiorari denied by 475 U.S. 1086, 106 S. Ct. 1470, 89 L. Ed. 2d 725, 1986 U.S. LEXIS 936, 54 U.S.L.W. 3630 (1986), writ of certiorari denied by 477 U.S. 906, 106 S. Ct. 3279, 91 L. Ed. 2d 568, 1986 U.S. LEXIS 2180, 54 U.S.L.W. 3840 (1986).

§ 1-201.03. Definitions.

For the purposes of this chapter:

- (1) The term "District" means the District of Columbia.
- (2) The term "Council" means the Council of the District of Columbia provided for by part A of subchapter IV of this chapter.
- (3) The term "Commissioner" means the Commissioner of the District of Columbia established under Reorganization Plan No. 3 of 1967.
- (4) The term "District of Columbia Council" means the Council of the District of Columbia established under Reorganization Plan No. 3 of 1967.
- (5) The term "Chairman" means, unless otherwise provided in this Act, the Chairman of the Council provided for by part A of subchapter IV of this chapter.
- (6) The term "Mayor" means the Mayor provided for by part B of subchapter IV of this chapter.
- (7) The term "act" includes any legislation passed by the Council, except where the term "Act" [chapter] is used to refer to this chapter or other Acts of Congress herein specified.
- (8) The term "capital project" means any physical public betterment or

improvement, the acquisition of property of a permanent nature, or the purchase of equipment or furnishings, and includes:

(A) Costs of any preliminary plans, studies, and surveys in connection with such betterment, improvement, acquisition, or purchase;

(B) Costs incidental to such betterment, improvement, acquisition, or purchase, and the financing thereof, including the cost of any election, professional fees, printing or engraving, production and reproduction of documents, publication of notices, taking of title, bond insurance, and interest during construction; and

(C) The reimbursement of any fund or account for amounts expended for the payment of any such costs.

(9) The term “pending”, when applied to any capital project, means authorized but not yet completed.

(10) The term “District revenues” means all funds derived from taxes, fees, charges, miscellaneous receipts, grants and other forms of financial assistance, or the sale of bonds, notes, or other obligations, and any funds administered by the District government under cost sharing arrangements.

(11) The term “election”, unless the context otherwise provides, means an election held pursuant to the provisions of this chapter.

(12) The terms “publish” and “publication”, unless otherwise specifically provided herein, mean publication in a newspaper of general circulation in the District.

(13) The term “District of Columbia Courts” means the Superior Court of the District of Columbia and the District of Columbia Court of Appeals.

(14) The term “resources” means revenues, balances, enterprise or other revolving funds, and funds realized from borrowing.

(15) The term “budget” means the entire request for appropriations or loan or spending authority for all activities of all departments or agencies of the District of Columbia financed from all existing, proposed, or anticipated resources, and shall include both operating and capital expenditures.

(Dec. 24, 1973, 87 Stat. 777, Pub. L. 93-198, title I, § 103; Dec. 28, 1981, 95 Stat. 1493, Pub. L. 97-105, § 1; Apr. 17, 1995, 109 Stat. 141, Pub. L. 104-8, § 301(a)(1); Aug. 5, 1997, 111 Stat. 777, Pub. L. 105-33, § 11601(b)(1)(A).)

Section references. — This section is referred to in §§ 2-601, 3-602, 47-368.01, and 47-368.02.

Prior Codifications. — 1981 Ed., § 1-202.
1973 Ed., § 1-122.

Emergency legislation. — For temporary (90 day) amendment of section 202 of Law 18-160, see § 2 of the Elected Attorney General Referendum Emergency Amendment Act of 2010 (D.C. Act 18-443, June 17, 2010, 57 DCR 5403).

For temporary (90 day) amendment of section 202 of Law 18-160, see § 2 of the Elected Attorney General Referendum Congressional Review Emergency Amendment Act of 2010 (D.C. Act 18-532, August 6, 2010, 57 DCR 8142).

For temporary (90 day) amendment of section 202 of D.C. Law 18-160, see § 204 of Receiving Stolen Property and Public Safety Amendments Emergency Amendment Act of 2011 (D.C. Act 19-261, December 21, 2011, 58 DCR 11232).

Legislative history of Law 18-160. — For history of Law 18-160, see notes under § 1-301.81.

Editor’s notes. — Application of § 301(a)(1) of Pub. L. 104-8: Section 301(a)(2) of Pub. L. 104-8, 109 Stat. 142, provided that the amendments made by paragraph (a)(1) shall apply with respect to revenues, resources, and budgets of the District of Columbia for fiscal years beginning with fiscal year 1996.

Law 18-160 not applicable: D.C. Law 18-160

contained an applicability clause for section 201 of the Act that, after amendment by emergency Act 18-443, temporary Law 18-224, and emergency Act 19-51, purported that section 201 would become law upon its ratification by a majority of the registered qualified electors of the District of Columbia voting in a referendum pursuant to section 303 of the District of Columbia Home Rule Act (HRA) and 35 days of congressional review. D.C. Law 18-160 purported to add a paragraph (16) to this section (§ 1-201.03) by referendum. The HRA does not allow this section to be amended by referendum.

Section 203 of D.C. Law 19-120 amended section 202 of D.C. Law 18-160 to read as follows: "Sec. 202. Applicability. Section 201 shall apply upon its ratification by a majority of the registered qualified electors of the District of Columbia voting in a referendum held for such purpose and a 35-day period of Congressional review as provided in section 303 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 784; D.C. Official Code § 1-203.03), and publication in the District of Columbia Register."

Subchapter II. Governmental Reorganization.

§ 1-202.01. Redevelopment Land Agency.

(a)-(e) [Omitted].

(f) For the purpose of § 1-207.13(d), employees in the District of Columbia Redevelopment Land Agency shall be deemed to be transferred to the District of Columbia as of January 2, 1975 without a break in service.

(Dec. 24, 1973, 87 Stat. 779, Pub. L. 93-198, title II, § 201(f).)

Editor's notes. — The text of § 1-202.01(a) through (e) is omitted because the corresponding text of section 201(a) through (e) of Public Law 93-198 amended another law.

§ 1-202.02. National Capital Housing Authority.

(a) The National Capital Housing Authority (hereinafter referred to as the "Authority") established under §§ 6-101.01 to 6-102.05 shall be an agency of the District of Columbia government subject to the organizational and reorganizational powers specified in §§ 1-204.04(b) and 1-204.22(12).

(b) All functions, powers, and duties of the President under §§ 6-101.01 to 6-102.05 shall be vested in and exercised by the Mayor. All employees, property (real and personal), and unexpended balances (available or to be made available) of appropriations, allocations, and all other funds, and assets and liabilities of the Authority are authorized to be transferred to the District of Columbia government.

(Dec. 24, 1973, 87 Stat. 779, Pub. L. 93-198, title II, § 202.)

Cross references. — Succession in government, abolition of prior government, see § 1-207.11.

Succession in government, transfer of personnel, property, and funds, see § 1-207.13.

Section references. — This section is referred to in §§ 1-206.03, 6-101.01, 6-101.02, 6-101.03, 6-101.05, 6-101.07, 6-102.04, 6-103.01, and 6-301.16.

Prior Codifications. — 1981 Ed., § 5-102. 1973 Ed., § 5-103a.

Delegation of Authority. — Delegation of

Authority to Implement the Provisions of the District of Columbia Alley Dwelling Act, see Mayor's Order 88-30, December 15, 1987; Mayor's Order 88-161, December 15, 1987.

Editor's notes. — Definitions applicable: The definitions in § 1-201.03 apply to this section.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia

Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the Dis-

trict of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

In general.

National Capital Housing Authority, which was established by statute as agency of District of Columbia government and functions, powers and duties of which were vested in mayor, was not sui juris and thus suit could not be main-

tained by tenant against Authority on ground that its negligence was cause of burglary and loss of personal property. D.C. Code §§ 5-103a(a, b), 5-703(b). *Braxton v. National Capital Housing Authority*, 396 A.2d 215, 1978 D.C. App. LEXIS 584 (1978).

§ 1-202.03. National Capital Planning Commission and municipal planning [Omitted].

Editor's notes. — The text of § 1-202.03 is omitted because the corresponding text of sec-

tion 203 of Public Law 93-198 amended another law.

§ 1-202.04. District of Columbia Manpower Administration.

(a) All functions of the Secretary of Labor (hereafter in this section referred to as the "Secretary") under § 3 of the Act entitled "An Act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system, and for other purposes," approved June 6, 1933 (29 U.S.C. §§ 49-49k), with respect to the maintenance of a public employment service for the District, are transferred to the Mayor. After the effective date of this transfer, the Secretary shall maintain with the District the same relationship with respect to a public employment service in the District, including the financing of such service, as he has with the States (with respect to a public employment service in the states) generally.

(b) The Mayor is authorized and directed to establish and administer a public employment service in the District and to that end he shall have all necessary powers to cooperate with the Secretary in the same manner as a State under the Act of June 6, 1933, specified in subsection (a) of this section.

(c) [Omitted].

(d) All functions of the Secretary of Labor and of the Director of Apprenticeship under the Act entitled "An Act to provide for voluntary apprenticeship in the District of Columbia", approved May 20, 1946, 1933 (29 U.S.C. §§ 49-49k) are transferred to and shall be exercised by the Mayor. The Office of Director of Apprenticeship provided for in § 32-1403 is abolished.

(e) All functions of the Secretary under chapter 81 of title 5 of the United States Code, with respect to the processing of claims filed by employees of the government of the District for compensation for work injuries, are transferred to and shall be exercised by the Mayor, effective the day after the day on which the District establishes an independent personnel system or systems.

(f) So much of the personnel, property, records, and unexpended balances of

appropriations, allocations, and other funds employed, held, used, available, or to be made available in connection with functions transferred to the Mayor by the provisions of this section, as the Director of the Federal Office of Management and Budget shall determine, are authorized to be transferred from the Secretary to the Mayor.

(g) Any employee in the competitive service of the United States transferred to the government of the District under the provisions of this section shall retain all the rights, benefits, and privileges pertaining thereto held prior to such transfer.

(h) [Omitted].

(Dec. 24, 1973, 87 Stat. 779, Pub. L. 93-198, title II, § 204(a), (b), (d)-(g).)

Prior Codifications. — 1981 Ed., §§ 36-406, 36-701.

1973 Ed., §§ 36-125a, 36-701.

Editor's notes. — The text of § 1-202.04(c)

and (h) is omitted because the corresponding text of section 204(c) and (h) of Public Law 93-198 amended other laws.

Subchapter III. District Charter Preamble, Legislative Power, and Charter Amending Procedure.

§ 1-203.01. District charter preamble.

The charter for the District of Columbia set forth in subchapter IV of this chapter shall establish the means of governance of the District following its acceptance by a majority of the registered qualified electors of the District voting thereon in the charter referendum held with respect thereto.

(Dec. 24, 1973, 87 Stat. 784, Pub. L. 93-198, title III, § 301.)

Prior Codifications. — 1981 Ed., § 1-203.

1973 Ed., § 1-123.

§ 1-203.02. Legislative power.

Except as provided in §§ 1-206.01 to 1-206.03, the legislative power of the District shall extend to all rightful subjects of legislation within the District consistent with the Constitution of the United States and the provisions of this chapter subject to all the restrictions and limitations imposed upon the states by the 10th section of the 1st article of the Constitution of the United States.

(Dec. 24, 1973, 87 Stat. 784, Pub. L. 93-198, title III, § 302.)

Prior Codifications. — 1981 Ed., § 1-204.

1973 Ed., § 1-124.

CASE NOTES

ANALYSIS

Ambiguous laws.

Construction and application.

Contract clause limitations.

Initiatives.

Taxation.

Worker's compensation.

Ambiguous laws.

District of Columbia Self-Government and Governmental Reorganization Act was not violated by ordinance prohibiting discrimination in provision of insurance, notwithstanding am-

biguity as to Act's reach, where legislative history indicated that District council intended for statute to apply only when insurance companies were doing business in District of Columbia. D.C. Code 1981, §§ 1-204, 1-233(a)(3). American Council of Life Ins. v. District of Columbia, 645 F. Supp. 84, 1986 U.S. Dist. LEXIS 20112 (1986).

Construction and application.

District of Columbia Self-Government Act did not bind Congress to contract clause for congressional legislation for District of Columbia despite delegation of legislative authority to local officials; Act expressly recognized congressional authority to exempt congressional legislation for District of Columbia from any contract clause limitation. U.S. Const. Art. 1, § 10, cl. 1; D.C. Code 1981, §§ 1-204, 1-206, 1-233, 47-313. District of Columbia v. American Fed'n of Gov't Employees, 619 A.2d 77, 1993 D.C. App. LEXIS 13 (1993), writ of certiorari denied by 510 U.S. 933, 114 S. Ct. 347, 126 L. Ed. 2d 312, 1993 U.S. LEXIS 6594, 62 U.S.L.W. 3288, 144 L.R.R.M. (BNA) 2520 (1993).

Even if District of Columbia were to violate statutory provision requiring it to abide by contract clause, Congress could step in and pass same legislation so that statute would be imposed on District that would violate contract clause if enacted by state. U.S. Const. Art. 1, § 10, cl. 1; D.C. Code 1981, §§ 1-204, 1-206. District of Columbia v. American Fed'n of Gov't Employees, 619 A.2d 77, 1993 D.C. App. LEXIS 13 (1993), writ of certiorari denied by 510 U.S. 933, 114 S. Ct. 347, 126 L. Ed. 2d 312, 1993 U.S. LEXIS 6594, 62 U.S.L.W. 3288, 144 L.R.R.M. (BNA) 2520 (1993).

The Superior Court has the authority, indeed the obligation and duty, to hold a provision of an Act of Congress, which is in substance local legislation, unconstitutional in the same manner and to the same extent that a state court judge could hold a provision of state legislation unconstitutional, if the law so required. American Fed'n of Gov't Employees v. District of Columbia, 120 WLR 2533 (Super. Ct. 1992).

District of Columbia City Council had authority, subject to certain limitations such as prohibition of lending public credit for private undertaking, to exempt convention-center hotel project from Procurement Procedures Act (PPA) if City Council had authority to enact procurement laws; City Council had plenary, though not absolute, authority to legislate for District of Columbia and could, as it saw fit in its sovereign legislative judgment, exempt, amend, or repeal laws enacted pursuant to its plenary authority. Wardman Investor, LLC v. D.C., Marriott International, Inc., Washington Convention and Sports Authority, 138 WLR 1221 (Super. Ct. 2010).

Contract clause limitations.

District of Columbia is subject to the contract

clause of the United States Constitution. U.S. Const. Art. 1, § 10, cl. 1; D.C. Code 1981, § 1-204. Washington Teachers' Union Local No. 6 v. Board of Educ., 109 F.3d 774, 1997 U.S. App. LEXIS 5306 (C.A.D.C. 1997).

Furlough days and provisions barring with-in-grade pay increases and accrual of time in grade for union workers employed by District of Columbia became operative through appropriations legislation enacted exclusively by Congress and, thus, legislation was not subject to contract clause review for allegedly violating collective bargaining agreements, even if District of Columbia had violated statutory contract clause limitations by including provisions in District's Budget Request Act that had been basis for congressional appropriations legislation. District of Columbia Appropriations Act, 1993, District of Columbia Supplemental Appropriations and Rescissions Act, 1992, 106 Stat. 1422; U.S. Const. Art. 1, § 10, cl. 1; D.C. Code 1981, §§ 1-204, 1-206. District of Columbia v. American Fed'n of Gov't Employees, 619 A.2d 77, 1993 D.C. App. LEXIS 13 (1993), writ of certiorari denied by 510 U.S. 933, 114 S. Ct. 347, 126 L. Ed. 2d 312, 1993 U.S. LEXIS 6594, 62 U.S.L.W. 3288, 144 L.R.R.M. (BNA) 2520 (1993).

Congress did not clearly convey intent to impose statutory contract clause limitations on appropriations legislation for District of Columbia that unions claimed violated contract clause by impairing obligations under existing collective bargaining agreements, despite language in legislative history of appropriations legislation that merely expressed congressional hope that issue could be decided at local level by District citizens and their government. U.S. Const. Art. 1, § 10, cl. 1; D.C. Code 1981, §§ 1-204, 1-206. District of Columbia v. American Fed'n of Gov't Employees, 619 A.2d 77, 1993 D.C. App. LEXIS 13 (1993), writ of certiorari denied by 510 U.S. 933, 114 S. Ct. 347, 126 L. Ed. 2d 312, 1993 U.S. LEXIS 6594, 62 U.S.L.W. 3288, 144 L.R.R.M. (BNA) 2520 (1993).

Initiatives.

The Council of the District of Columbia has authority to repeal, or to amend in more than technical fashion, laws adopted through initiative process. D.C. Code 1981, §§ 1-204, 1-227(a), 1-281 et seq., 1-285. Atchison v. District of Columbia, 585 A.2d 150, 1991 D.C. App. LEXIS 3 (1991).

Taxation.

District's enactment of tax on gross receipts received from sale of toll communications services that originated from or terminated on telecommunications equipment located in District and billed to District telephone did not violate origination clause requirement that rev-

enue bill originate in House of Representatives; self-government act, which provided source of local government's taxing authority, was not "revenue bill" for origination clause purposes, given that bill did not levy taxes to generate revenue for United States government, but rather provided measure of self-government for citizens of District. U.S. Const. Art. 1, § 7, cl. 1; D.C. Code 1981, §§ 1-201 et seq., 47-2501(b). *Sprint Communications Co. v. Kelly*, 642 A.2d 106, 1994 D.C. App. LEXIS 31 (1994), writ of certiorari denied by 513 U.S. 916, 115 S. Ct. 294, 130 L. Ed. 2d 208, 1994 U.S. LEXIS 6972, 63 U.S.L.W. 3267 (1994).

Worker's compensation.

Action by Congress within District of Colum-

bia Self-Government and Governmental Reorganization Act expressly transferring the public workmen's compensation program to District of Columbia, in absence of a concurrent transfer of private employment workmen's compensation, did not reflect congressional intent to prohibit local government from legislating with respect to private workmen's compensation. *Longshoremen's and Harbor Workers' Compensation Act*, §§ 1 et seq., 39, 33 U.S.C. §§ 901 et seq., 939; D.C. Code 1981, §§ 1-204, 1-233(a)(3); 5 U.S.C. § 8101 et seq. *District of Columbia v. Greater Washington Cent. Labor Council*, 442 A.2d 110, 1982 D.C. App. LEXIS 288 (1982), writ of certiorari denied by 460 U.S. 1016, 103 S. Ct. 1261, 75 L. Ed. 2d 487, 1983 U.S. LEXIS 3736, 51 U.S.L.W. 3634 (1983).

§ 1-203.03. Charter amending procedure.

(a) The charter set forth in subchapter IV of this chapter (including any provision of law amended by such subchapter), except §§ 1-204.01(a) and 1-204.21(a), and part C of such subchapter, may be amended by an act passed by the Council and ratified by a majority of the registered qualified electors of the District voting in the referendum held for such ratification. The Chairman of the Council shall submit all such acts to the Speaker of the House of Representatives and the President of the Senate on the day the Board of Elections and Ethics certifies that such act was ratified by a majority of the registered qualified electors voting thereon in such referendum.

(b) An amendment to the charter ratified by the registered electors shall take effect upon the expiration of the 35-calendar-day period (excluding Saturdays, Sundays, holidays, and days on which either House of Congress is not in session) following the date such amendment was submitted to the Congress, or upon the date prescribed by such amendment, whichever is later, unless during such 35-day period, there has been enacted into law a joint resolution, in accordance with the procedures specified in § 1-206.04, disapproving such amendment. In any case in which any such joint resolution disapproving such an amendment has, within such 35-day period, passed both Houses of Congress and has been transmitted to the President, such resolution, upon becoming law subsequent to the expiration of such 35-day period, shall be deemed to have repealed such amendment, as of the date such resolution becomes law.

(c) The Board of Elections and Ethics shall prescribe such rules as are necessary with respect to the distribution and signing of petitions and the holding of elections for ratifying amendments to subchapter IV of this chapter according to the procedures specified in subsection (a) of this section.

(d) The amending procedure provided in this section may not be used to enact any law or affect any law with respect to which the Council may not enact any act, resolution, or rule under the limitations specified in §§ 1-206.01 to 1-206.03.

(Dec. 24, 1973, 87 Stat. 784, Pub. L. 93-198, title III, § 303; Aug. 14, 1974, 88

Stat. 458, Pub. L. 93-376, title III, § 306(a); Oct. 12, 1984, 98 Stat. 1974, Pub. L. 98-473, § 131(b).)

Prior Codifications. — 1981 Ed., § 1-205. 1973 Ed., § 1-125.

Emergency legislation. — For temporary (90 day) amendment of § 202 of D.C. Law 18-160, see § 2 of Elected Attorney General Referendum Emergency Amendment Act of 2011 (D.C. Act 19-51, April 27, 2011, 58 DCR 3878).

Editor's notes. — Fiscal year: Section 131(n) of Pub. L. 98-473 provided that the provisions of this section shall be effective hereafter without limitation as to fiscal year, notwithstanding any other provision of the joint resolution.

CASE NOTES

ANALYSIS

Charter amendments, generally.

Initiative right.

Laws appropriating funds.

Validity.

Charter amendments, generally.

District of Columbia statute known as "Utility Regulatory Assessment and Clarification Act of 1984" was not charter amendment and did not have to be put in front of voters of District for their approval once popularly elected representatives had approved it; Act did not directly change charter and any indirect effect Act might have had on Public Service Commission did not rise to level of charter amendment by altering structure or manner in which Commission operated in any significant way. D.C. Code 1981, § 43-406 et seq.; U.S. Const. Amends. 5, 14. *Potomac Electric Power Co. v. District of Columbia Government*, 651 F. Supp. 907, 1986 U.S. Dist. LEXIS 16007 (1986).

Amendment to District of Columbia Charter, such as right of initiative, cannot be viewed in vacuum, but must be construed in light of statutory scheme established by charter in District of Columbia Self-Government and Governmental Reorganization Act. D.C. Code 1981, § 1-201 et seq. *Hessey v. District of Columbia Bd. of Elections & Ethics*, 601 A.2d 3, 1991 D.C. App. LEXIS 318 (1991).

Initiative right.

District of Columbia's adoption of initiative right did not violate provisions of District's Charter establishing District Council and office of mayor and method of election therefor. D.C. Code 1981, §§ 1-205(a), 1-221(a), 1-241(a). *Stevenson v. District of Columbia Bd. of Elections & Ethics*, 683 A.2d 1371, 1996 D.C. App. LEXIS 201 (1996).

Since amendments to District of Columbia Charter required Congressional approval when initiative right was approved by Congress, court must consider Congressional intent in approving amendment. D.C. Code 1981, § 1-1320. *Hessey v. District of Columbia Bd. of*

Elections & Ethics, 601 A.2d 3, 1991 D.C. App. LEXIS 318 (1991).

A procedure is impermissible where it would amend a section immediately on voter ratification of the initiative at a primary election, omitting any action by Congress entirely. *Johnson v. District of Columbia Bd. of Elections & Ethics*, 122 WLR 1593 (Super. Ct. 1994).

Laws appropriating funds.

Amendment which barred any initiative that would negate or limit a budget request act of District of Columbia Council properly specified limitations that charter amendments placed on initiative right and thus limitations specified by amendment were congruent, with respect to initiatives that contravene existing budget request acts with those inherent in underlying "laws appropriating funds" exception to initiative right. (Per Ferren, J., with two Judges concurring and two Judges concurring in result.) D.C. Code 1980 Supp. §§ 1-181(a), 1-1116(k)(7), (l). *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

Validity.

Congressional oversight provisions of District of Columbia Home Rule Act, requiring that both houses of Congress must approve ratified amendment to city charter by concurrent resolution within 35 days of its submission to Congress but not requiring presentment of amendment to President for signature, was unconstitutional. D.C. Code 1981, § 1-205(b); U.S. Const. Art. 1, § 7, cl. 3. *McClough v. United States*, 520 A.2d 285, 1987 D.C. App. LEXIS 281 (1987).

Unconstitutional subdivision of District of Columbia Home Rule Act, requiring both houses of Congress to approve ratified amendment to city charter by concurrent resolution within 35 days of its submission to Congress but not requiring presentment of amendment to President for signature, was severable from other subdivision of same section of Act, providing that city charter could be amended by act

passed by city council and ratified by majority of registered qualified electors of District voting in referendum held for such ratification, so that mandatory minimum sentencing provision for drug dealers, enacted by citizen initiative, was

valid. D.C. Code 1981, §§ 1-205(a, b), 33-541(a)(1); U.S. Const. Art. 1, § 7, cl. 3. *McClough v. United States*, 520 A.2d 285, 1987 D.C. App. LEXIS 281 (1987).

Subchapter IV. The District Charter.

Part A

THE COUNCIL.

§ 1-204.01. Creation and membership.

(a) There is established a Council of the District of Columbia; and the members of the Council shall be elected by the registered qualified electors of the District.

(b)(1) The Council established under subsection (a) of this section shall consist of 13 members elected on a partisan basis. The Chairman and 4 members shall be elected at large in the District, and 8 members shall be elected 1 each from the 8 election wards established, from time to time, under Chapter 10 of this title. The term of office of the members of the Council shall be 4 years, except as provided in paragraph (3) of this subsection, and shall begin at noon on January 2nd of the year following their election.

(2) In the case of the first election held for the office of member of the Council after January 2, 1975, not more than 2 of the at-large members (excluding the Chairman) shall be nominated by the same political party. Thereafter, a political party may nominate a number of candidates for the office of at-large member of the Council equal to 1 less than the total number of at-large members (excluding the Chairman) to be elected in such election.

(3) To fill a vacancy in the Office of Chairman, the Board of Elections shall hold a special election in the District on the Tuesday occurring at least 70 days and not more than 174 days after the date on which such vacancy occurs which the Board of Elections determines, based on a totality of the circumstances, taking into account, inter alia, cultural and religious holidays and the administrability of the election, will provide the opportunity for the greatest level of voter participation. The person elected Chairman to fill a vacancy in the Office of Chairman shall take office on the day in which the Board of Elections and Ethics certifies his election, and shall serve as Chairman only for the remainder of the term during which such vacancy occurred. When the Office of Chairman becomes vacant, the Council shall select one of the elected at-large members of the Council to serve as Chairman and one to serve as Chairman pro tempore until the election of a new Chairman.

(4) Of the members first elected after January 2, 1975, the Chairman and 2 members elected at large and 4 of the members elected from election wards shall serve for 4-year terms; and 2 of the at-large members and 4 of the members elected from election wards shall serve for 2-year terms. The members to serve the 4-year terms and the members to serve the 2-year terms

shall be determined by the Board of Elections and Ethics by lot, except that not more than one of the at-large members nominated by any political party shall serve for any such 4-year term.

(c) The Council may establish and select such other officers and employees as it deems necessary and appropriate to carry out the functions of the Council.

(d)(1) In the event of a vacancy in the Council of a member elected from a ward, the Board of Elections shall hold a special election in the District on the Tuesday occurring at least 70 days and not more than 174 days after the date on which such vacancy occurs which the Board of Elections determines, based on a totality of the circumstances, taking into account, inter alia, cultural and religious holidays and the administrability of the election, will provide the opportunity for the greatest level of voter participation. The person elected as a member to fill a vacancy on the Council shall take office on the day on which the Board of Elections and Ethics certifies his election, and shall serve as a member of the Council only for the remainder of the term during which such vacancy occurred.

(2) In the event of a vacancy in the Office of Mayor, and if the Chairman becomes a candidate for the Office of Mayor to fill such vacancy, the Office of Chairman shall be deemed vacant as of the date of the filing of his candidacy. In the event of a vacancy in the Council of a member elected at large, other than a vacancy in the Office of Chairman, who is affiliated with a political party, the central committee of such political party shall appoint a person to fill such vacancy, until the Board of Elections and Ethics can hold a special election to fill such vacancy, and such special election shall be held on the Tuesday occurring at least 70 days and not more than 174 days after the date on which such vacancy occurs which the Board of Elections determines, based on a totality of the circumstances, taking into account, inter alia, cultural and religious holidays and the administrability of the election, will provide the opportunity for the greatest level of voter participation. The person appointed to fill such vacancy shall take office on the date of his appointment and shall serve as a member of the Council until the day on which the Board certifies the election of the member elected to fill such vacancy in either a special election or a general election. The person elected as a member to fill such a vacancy on the Council shall take office on the day on which the Board of Elections and Ethics certifies his election, and shall serve as a member of the Council only for the remainder of the term during which such vacancy occurred. With respect to a vacancy on the Council of a member elected at large who is not affiliated with any political party, the Council shall appoint a similarly non-affiliated person to fill such vacancy until such vacancy can be filled in a special election in the manner prescribed in this paragraph. Such person appointed by the Council shall take office and serve as a member at the same time and for the same term as a member appointed by a central committee of a political party.

(3) Notwithstanding any other provision of this section, at no time shall there be more than 3 members (including the Chairman) serving at large on the Council who are affiliated with the same political party.

(Dec. 24, 1973, 87 Stat. 785, Pub. L. 93-198, title IV, § 401; Aug. 14, 1974, 88

Stat. 458, Pub. L. 93-376, title III, § 306(a); Aug. 29, 1974, 88 Stat. 793, Pub. L. 93-395, § 1(2); July 18, 2012, 126 Stat. 1133, Pub. L. 112-145, § 2(a).)

Cross references. — Elected officials, use of official mail, see § 2-701 et seq.

Elections, recall of elected officials, see § 1-1001.17.

Section references. — This section is referred to in §§ 1-203.03, 1-204.114, 1-207.71, 1-301.47, 1-603.01, 2-502, 2-601, 2-1401.02, 38-1800.02, 38-1201.03, 39-202, 47-802, and 47-1401.

Prior Codifications. — 1981 Ed., § 1-221. 1973 Ed., § 1-141.

Effect of amendments. — Pub. L. 112-145, in subsec. (b)(3), rewrote the first sentence, which had read: “To fill a vacancy in the Office of Chairman, the Board of Elections and Ethics shall hold a special election in the District on the 1st Tuesday occurring more than 114 days after the date on which such vacancy occurs, unless the Board of Elections and Ethics determines that such vacancy could be more practicably filled in a special election held on the same day as the next general election to be held in the District occurring within 60 days of the date on which a special election would otherwise have been held under the provisions of this paragraph.”; in subsec. (d)(1), rewrote the first sentence which had read: “In the event of a vacancy in the Council of a member elected from a ward, the Board of Elections and Ethics shall hold a special election in such ward to fill such vacancy on the 1st Tuesday occurring more than 114 days after the date on which such vacancy occurs, unless the Board of Elections and Ethics determines that such vacancy could be more practicably filled in a special election held on the same day as the next general election to be held in the District occurring within 60 days of the date on which a special election would otherwise have been held under the provisions of this subsection.”; and, in the second sentence of subsec. (d)(2), substituted “and such special election shall be held on the Tuesday occurring at least 70 days and not more than 174 days after the date on which such vacancy occurs which the Board of Elections determines, based on a totality of the circumstances, taking into account, inter alia, cultural and religious holidays and the administrability of the election, will provide the opportunity for the greatest level of voter participation.” for “and such special election shall be held on the 1st Tuesday occurring more than 114 days after the date on which such vacancy occurs unless the Board of Elections and Ethics determines that such vacancy could be more practicably filled in a special election held on the same day as the next general election to be held in the District occurring within 60 days of the date on which a special election would

otherwise be held under the provisions of this subsection.”

Temporary Amendment of Section. — Section 2(a) of D.C. Law 18-301, in subssecs. (b) and (d), substituted “more than seventy days” for “more than one hundred fourteen days” wherever it appears.

Section 3 of D.C. Law 18-301 provided that this act shall apply upon enactment by Congress.

Section 5(b) of D.C. Law 18-301 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see §§ 2(a), 3 of Special Election Reform Charter Emergency Amendment Act of 2010 (D.C. Act 18-591, November 3, 2010, 57 DCR 10470).

For temporary (90 day) addition of section, see § 3 of Special Election Reform Charter Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-7, February 11, 2011, 58 DCR 1416).

For temporary (90 day) amendment of section, see § 2(a) of Special Election Reform Charter Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-7, February 11, 2011, 58 DCR 1416).

For temporary (90 day) amendment of section, see § 301(a) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

For temporary (90 day) addition of section, see § 602(b) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Effective date. — Section 601(j) of D.C. Law 19-124 provided: “(j) Title IV shall apply on its effective date as provided in section 303 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 784; D.C. Official Code § 1-203.03).”

Section 3 of Pub. L. 112-145 provided: “Sec. 3. Effective Date. The amendments made by section 2 shall apply with respect to vacancies occurring on or after the enactment of this Act.”

Editor’s notes. — Section 2 of D.C. Law 17-156 amended this section subject to congressional enactment. As of the publication of this note, congress has not enacted section 2 of D.C. Law 17-156.

Section 401(a) of D.C. Law 19-124 provided for the addition of subsec. (e) to read as follows: “(e)(1) By a 5/6 vote of its members, the Council may adopt a resolution of expulsion if it

finds, based on substantial evidence, that a member of the Council took an action that amounts to a gross failure to meet the highest standards of personal and professional conduct. Expulsion is the most severe punitive action, serving as a penalty imposed for egregious wrongdoing. Expulsion results in the removal of the member. Expulsion should be used in cases in which the Council determines that the violation of law committed by a member is of the most serious nature, including those violations that substantially threaten the public

trust. To protect the exercise of official member duties and the overriding principle of freedom of speech, the Council shall not impose expulsion on any member for the exercise of his or her First Amendment right, no matter how distasteful the expression of that right was to the Council and the District, or in the official exercise of his or her office.

"(2) The Council shall include in its Rules of Organization procedures for investigation, and consideration of, the expulsion of a member."

CASE NOTES

ANALYSIS

Authority of court.
 Authority of Board of elections.
 Construction and application.
 Local authority.
 Mayoral candidates.
 Resignation before nomination.
 Validity.

Authority of court.

Court of Appeals has statutory authority to review a decision of the Board of Elections and Ethics refusing to certify, as eligible to take office, the winner of an election for an at-large seat on the Council of the District of Columbia, which refusal is based on the Board's determination that the election winner's membership on the Council would violate the District's statute prohibiting more than three Council members who are affiliated with the same political party from serving at-large on the Council. *Kabel v. D.C. Bd. of Elections & Ethics*, 962 A.2d 919, 2008 D.C. App. LEXIS 492 (2008).

Authority of Board of elections.

Board of Elections and Ethics has statutory authority to refuse to certify, as eligible to take office, the winner of an election for an at-large seat on the Council of the District of Columbia if the election winner's membership on the Council would violate the District's statute prohibiting more than three Council members who are affiliated with the same political party from serving at-large on the Council. *Kabel v. D.C. Bd. of Elections & Ethics*, 962 A.2d 919, 2008 D.C. App. LEXIS 492 (2008).

Construction and application.

"affiliated with the same political party," for purposes of District of Columbia statute prohibiting more than three members of the Council of the District of Columbia who are affiliated with the same political party from serving at-large on the Council, means party registration as indicated by Board of Elections and Ethics voter registration records. *Kabel v. D.C. Bd. of Elections & Ethics*, 962 A.2d 919, 2008 D.C. App. LEXIS 492 (2008).

District of Columbia's adoption of initiative right did not violate provisions of District's Charter establishing District Council and office of mayor and method of election therefor. D.C. Code 1981, §§ 1-205(a), 1-221(a), 1-241(a). *Stevenson v. District of Columbia Bd. of Elections & Ethics*, 683 A.2d 1371, 1996 D.C. App. LEXIS 201 (1996).

Local authority.

Fact that District of Columbia offices were only recently made elective by Congress in no way diminished importance of rights associated with seeking those offices; although Congress was not constitutionally required to grant self-government to District of Columbia, once Congress did so, it could not impose unconstitutional conditions or unnecessarily burden First Amendment rights inherent in democratic self-government. U.S. Const. Amend. 1. *Barry v. District of Columbia Board of Elections & Ethics*, 448 F. Supp. 1249, 1978 U.S. Dist. LEXIS 18373 (1978), appeal dismissed by 580 F.2d 695, 188 U.S. App. D.C. 432, 1978 U.S. App. LEXIS 10640 (1978).

Mayoral candidates.

District of Columbia mayoral candidate's right to candidacy was important but not constitutionally fundamental right. U.S. Const. Amend. 1. *Barry v. District of Columbia Board of Elections & Ethics*, 448 F. Supp. 1249, 1978 U.S. Dist. LEXIS 18373 (1978), appeal dismissed by 580 F.2d 695, 188 U.S. App. D.C. 432, 1978 U.S. App. LEXIS 10640 (1978).

Resignation before nomination.

District of Columbia Election Act section which required that person holding any of certain offices resign before filing nominating petition for any of certain other offices if such other office had term beginning prior to end of term of office presently held created distinction between those holding coincident and noncoincident terms which was not justified by any rational governmental purpose and thus violated equal protection guaranty of Fifth Amendment. U.S. Const. Amend. 5; D.C. Code

§ 1-1115(b). *Barry v. District of Columbia Board of Elections & Ethics*, 448 F. Supp. 1249, 1978 U.S. Dist. LEXIS 18373 (1978), appeal dismissed by 580 F.2d 695, 188 U.S. App. D.C. 432, 1978 U.S. App. LEXIS 10640 (1978).

Validity.

Provisions of District of Columbia Self-Government and Governmental Reorganization Act restricting candidates of any one political party to holding only two of the four at-large seats on the district council did not unconstitutionally discriminate against political parties on ground that it allowed independent candidates to be elected to all four at-large seats since purpose of such restriction, i.e., to prevent one organization's candidates from capturing more than two at-large seats, did not exist with independent candidates since they are not related organizationally to any other candidates. *District of Columbia Self-Government and Governmental Reorganization Act*, § 401(b)(2), (d)(3), D.C. Code preceding § 1-101; *U.S. Const. Amend. 5. Hechinger v. Martin*, 411 F. Supp. 650, 1976 U.S. Dist. LEXIS 15944 (1976), affirmed by 429

U.S. 1030, 97 S. Ct. 721, 50 L. Ed. 2d 742, 1977 U.S. LEXIS 164 (1977).

Provisions of District of Columbia Self-Government and Governmental Reorganization Act limiting number of candidates which a political party can nominate for office of at-large membership on the council and limiting to three the number of candidates of any one political party serving at large did not work a deprivation of First Amendment rights of members of political party with a majority of registered voters; Congress' interest in facilitating representation of political minorities on the city council of the nation's capitol was a valid one and was sufficient to warrant challenged interference with the rights of political association and means adopted to promote such interest were reasonable and did not amount to any unnecessary abridgement of rights. *District of Columbia Self-Government and Governmental Reorganization Act*, § 401(b)(2), (d)(3), D.C. Code preceding § 1-101; *U.S. Const. Amend. 1. Hechinger v. Martin*, 411 F. Supp. 650, 1976 U.S. Dist. LEXIS 15944 (1976), affirmed by 429 U.S. 1030, 97 S. Ct. 721, 50 L. Ed. 2d 742, 1977 U.S. LEXIS 164 (1977).

§ 1-204.02. Qualifications for holding office.

No person shall hold the office of member of the Council, including the Office of Chairman, unless he: (1) Is a qualified elector; (2) is domiciled in the District and if he is nominated for election from a particular ward, resides in the ward from which he is nominated; (3) has resided and been domiciled in the District for 1 year immediately preceding the day on which the general or special election for such office is to be held; and (4) holds no public office (other than his employment in and position as a member of the Council), for which he is compensated in an amount in excess of his actual expenses in connection therewith, except that nothing in this clause shall prohibit any such person, while a member of the Council, from serving as a delegate or alternate delegate to a convention of a political party nominating candidates for President and Vice President of the United States, or from holding an appointment in a reserve component of an armed force of the United States other than a member serving on active duty under a call for more than 30 days. A member of the Council shall forfeit his office upon failure to maintain the qualifications required by this section, and, in the case of the Chairman, § 1-204.03(c).

(Dec. 24, 1973, 87 Stat. 786, Pub. L. 93-198, title IV, § 402.)

Prior Codifications. — 1981 Ed., § 1-225. 1973 Ed., § 1-142.

Emergency legislation. — For temporary (90 day) amendment of section, see § 301(b) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

For temporary (90 day) addition of section, see § 602(b) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Effective date. — Section 601(j) of D.C. Law 19-124 provided: "(j) Title IV shall apply on its effective date as provided in section 303 of the

District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 784; D.C. Official Code § 1-203.03)."

Editor's notes. — Section 401(b) of D.C.

Law 19-124 provided for the substitution of "to be held; (d) has not been convicted of a felony while holding the office; and (e) holds" for "to be held; and (d) holds".

CASE NOTES

ANALYSIS

Residency.

Review.

Residency.

Court of Appeals lacked jurisdiction to hear direct appeal from decision of Board of Elections and Ethics denying petitioner's challenge to qualifications of prospective candidate for council seat on residency grounds filed before Board finally determined candidate's eligibility. D.C. Code 1981, §§ 1-225, 1-1502(8), 1-1510(a), 11-722. *Lawrence v. District of Columbia Bd. of Elections & Ethics*, 611 A.2d 529, 1992 D.C. App. LEXIS 197 (1992).

Candidate for council seat remained resident of District, as required to establish eligibility to hold public office, during period of incarceration

in Virginia and Pennsylvania, since he never expressed any intent not to return to the District, and he did indeed return upon his release from prison. D.C. Code 1981, §§ 1-225, 1-1302(16)(E). *Lawrence v. District of Columbia Bd. of Elections & Ethics*, 611 A.2d 529, 1992 D.C. App. LEXIS 197 (1992).

Review.

Court of Appeals, reviewing Board of Elections and Ethics decision that political candidate is qualified, should interpret qualifications for candidacy in an inclusive spirit, since a meaningful part of right to vote is to vote for candidate of one's choice. D.C. Code 1981, § 1-225. *Lawrence v. District of Columbia Bd. of Elections & Ethics*, 611 A.2d 529, 1992 D.C. App. LEXIS 197 (1992).

§ 1-204.03. Compensation.

(a) Each member of the Council shall receive compensation, payable in periodic installments, at a rate equal to the maximum rate as may be established from time to time for grade 12 of the General Schedule under § 5332 of Title 5 of the United States Code. On and after the end of the 2-year period beginning on the day the members of the Council first elected under this chapter take office, the Council may, by act, increase or decrease such rate of compensation. Such change in compensation, upon enactment by the Council in accordance with the provisions of this chapter, shall apply with respect to the term of members of the Council beginning after the date of enactment of such change.

(b) All members of the Council shall receive additional allowances for actual and necessary expenses incurred in the performance of their duties of office as may be approved by the Council.

(c) The Chairman shall not engage in any employment (whether as an employee or as a self-employed individual) or hold any position (other than his position as Chairman), for which he is compensated in an amount in excess of his actual expenses in connection therewith.

(d) Notwithstanding subsection (a), as of December 21, 2001, the Chairman shall receive compensation, payable in equal installments, at a rate equal to \$10,000 less than the annual compensation of the Mayor.

(Dec. 24, 1973, 87 Stat. 787, Pub. L. 93-198, title IV, § 403; Dec. 21, 2001, 107 Stat. 957, Pub. L. 107-96, § 136.)

Cross references. — Campaign finance, see § 1-1101.01 et seq.

Compensation of Mayor and councilmembers, see § 1-611.09.

Merit system, coverage and limitations, see § 1-602.02.

Section references. — This section is referred to in §§ 1-123 and 1-204.02.

Prior Codifications. — 1981 Ed., § 1-226. 1973 Ed., § 1-143.

Effect of amendments. — Pub. L. 107-96, in subsec. (c), deleted “shall receive, in addition to the compensation to which he is entitled as a member of the Council, \$10,000 per annum,

payable in equal installments, for each year he serves as Chairman, but the Chairman” preceding “shall not engage”; and added subsec. (d).

Editor’s notes. — Request for Congressional action: Pursuant to § 5 of D.C. Law 10-168 and § 5 of D.C. Law 10-225 the Council requested that the United States Congress enact legislation to repeal subsection (c) of this section.

§ 1-204.04. Powers of the Council.

(a) Subject to the limitations specified in §§ 1-206.01 to 1-206.04, the legislative power granted to the District by this chapter is vested in and shall be exercised by the Council in accordance with this chapter. In addition, except as otherwise provided in this chapter, all functions granted to or imposed upon, or vested in or transferred to the District of Columbia Council, as established by Reorganization Plan No. 3 of 1967, shall be carried out by the Council in accordance with the provisions of this chapter.

(b) The Council shall have authority to create, abolish, or organize any office, agency, department, or instrumentality of the government of the District and to define the powers, duties, and responsibilities of any such office, agency, department, or instrumentality.

(c) The Council shall adopt and publish rules of procedures which shall include provisions for adequate public notification of intended actions of the Council.

(d) Every act shall be published and codified upon becoming law as the Council may direct.

(e) An act passed by the Council shall be presented by the Chairman of the Council to the Mayor, who shall, within 10 calendar days (excluding Saturdays, Sundays, and holidays) after the act is presented to him, either approve or disapprove such act. If the Mayor shall approve such act, he shall indicate the same by affixing his signature thereto, and such act shall become law subject to the provisions of § 1-206.02(c). If the Mayor shall disapprove such act, he shall, within 10 calendar days (excluding Saturdays, Sundays, and holidays) after it is presented to him, return such act to the Council setting forth in writing his reasons for such disapproval. If any act so passed shall not be returned to the Council by the Mayor within 10 calendar days after it shall have been presented to him, the Mayor shall be deemed to have approved it, and such act shall become law subject to the provisions of § 1-206.02(c) unless the Council by a recess of 10 days or more prevents its return, in which case it shall not become law. If, within 30 calendar days after an act has been timely returned by the Mayor to the Council with his disapproval, two-thirds of the members of the Council present and voting vote to reenact such act, the act so reenacted shall become law subject to the provisions of § 1-206.02(c).

(f) In the case of any budget act adopted by the Council pursuant to § 1-204.46 and submitted to the Mayor in accordance with subsection (e) of this section, the Mayor shall have power to disapprove any items or provisions, or both, of such act and approve the remainder. In any case in which the Mayor

so disapproves of any item or provision, he shall append to the act when he signs it a statement of the item or provision which he disapproves, and shall, within such 10-day period, return a copy of the act and statement with his objections to the Council. If, within 30 calendar days after any such item or provision so disapproved has been timely returned by the Mayor to the Council, two-thirds of the members of the Council present and voting vote to reenact any such item or provision, such item or provision so reenacted shall be transmitted by the Chairman to the President of the United States. In any case in which the Mayor fails to timely return any such item or provision so disapproved to the Council, the Mayor shall be deemed to have approved such item or provision not returned, and such item or provision not returned shall be transmitted by the Chairman to the President of the United States. In the case of any budget act for a fiscal year which is a control year (as defined in § 47-393(4)), this subsection shall apply as if the reference in the second sentence to "ten-day period" were a reference to "five-day period" and the reference in the third sentence to "thirty calendar days" were a reference to "5 calendar days."

(Dec. 24, 1973, 87 Stat. 787, Pub. L. 93-198, title IV, § 404; Oct. 27, 1978, 92 Stat. 2023, Pub. L. 95-526; Apr. 17, 1995, 109 Stat. 116, Pub. L. 104-8, § 202(f)(2).)

Cross references. — Acts and resolutions, effectiveness, publication prerequisite, see § 2-602.

Boxing and wrestling commission, statement of authority, see § 3-603.

Budget and financial management, review of financial plan, see § 47-392.02.

Budget and financial management, special rules for fiscal year 1996, see § 47-392.08.

Commission on the arts and humanities, authorization, see § 39-201.

Council, authority over elections, see § 1-207.52.

Department of administrative services and related agencies, transfer of functions to Council, see § 10-1301.

Department of human rights and local business development, abolishment, see § 2-1411.06.

Department of insurance and securities regulation, establishment, see § 31-102.

Department of motor vehicles, establishment, see § 50-901.

Economic development liaison office, establishment, see § 2-1203.01.

Initiative and referendum process, see § 1-1001.16.

Insurance regulatory trust fund, establishment, see § 31-1202.

National capital housing authority, creation, see § 1-202.02.

Office of chief technology officer, establishment, see § 1-1401.

Office of economic development, transfer of

authority to board of corporation, see § 2-1219.29.

Office of human rights, establishment, see § 2-1411.01.

Office of property management, establishment, see § 10-1001.

Office of zoning, powers and duties, see § 6-623.03.

Open meetings, availability of written transcripts, see § 1-207.42.

Public acts and resolutions, publication requirements, see § 2-602.

Public space park areas, transfer of jurisdiction to department of recreation, see § 10-166.

Transitional council and offices, delegation and transfer of functions, see § 1-207.12.

Washington convention center, board of directors, powers and duties, see § 10-1212.

Section references. — This section is referred to in §§ 1-204.102, 2-218.11, 2-218.21, 2-1515.02, 8-151.03, 38-1208.02, and 50-921.01.

Prior Codifications. — 1981 Ed., § 1-227. 1973 Ed., § 1-144.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Reorganization Plan No. 5 for the Department of Human Services and Department of Corrections Temporary Act of 1996 (D.C. Law 11-214, April 9, 1997, law notification 44 DCR 2409).

For temporary (225 day) amendment of section, see § 2 of Reorganization Plan No. 5 for the Department of Human Services and Department of Corrections Temporary Act of 1997

(D.C. Law 12-80, March 24, 1998, law notification 45 DCR 2115).

For temporary (225 day) amendment of section, see § 2 of Reorganization Plan No. 5 for the Department of Human Services and Department of Corrections Temporary Act of 1998 (D.C. Law 12-214, April 13, 1999, law notification 46 DCR 3836).

Emergency legislation. — For temporary enactment of reorganization plan to consolidate all psychiatric services provided to inmates at the D.C. Jail and the Lorton Correctional Facility within the DOC, see § 3 of the Reorganization Plan No. 5 for the Department of Human Services and Department of Corrections Congressional Review Emergency Act of 1997 (D.C. Act 12-57, March 31, 1997, 44 DCR 2226), and see § 3 of the Reorganization Plan No. 5 for the Department of Human Services and Department of Corrections Emergency Act of 1997 (D.C. Act 12-201, December 10, 1997, 44 DCR 7600).

For temporary transfer of the Bureau of Correctional Services from the Department of Human Services to the Department of Corrections, see § 2 of the Reorganization Plan No. 5 for the Department of Human Services and Department of Corrections Congressional Review Emergency Act of 1997 (D.C. Act 12-57, March 31, 1997, 44 DCR 2226), §§ 2-3 of the Reorganization Plan No. 5 for the Department of Human Services and Department of Corrections Emergency Act of 1997 (D.C. Act 12-201, December 10, 1997, 44 DCR 7600), and §§ 2-3 of the Reorganization Plan No. 5 for the Department of Human Services and Department of Corrections Emergency Act of 1998 (D.C. Act 12-510, November 10, 1998, 45 DCR 8149).

For temporary reorganization of the Department of Human Services to transfer the Bureau of Correctional Services from the Department of Human Services to the Department of Corrections, see §§ 2-3 of the Reorganization Plan No. 5 for the Department of Human Services and Department of Corrections Emergency Act of 1998 (D.C. Act 12-510, November 10, 1998, 45 DCR 8149), and §§ 2-3 of the Reorganization Plan No. 5 for the Department of Human Services and Department of Corrections Congressional Review Emergency Act of 1999 (D.C. Act 13-8, February 8, 1999, 46 DCR 2313).

For temporary (90 day) addition of section, see § 1022 of Fiscal Year 2012 Budget Support Emergency Act of 2011 (D.C. Act 19-93, June 29, 2011, 58 DCR 5599).

For temporary (90 day) amendment of title D of article VI of D.C. Res. 19-1, see § 401(b) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

For temporary (90 day) amendment of article I of D.C. Res. 19-281, see § 401(p) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 12-256. — Law 12-256, the “Reorganization Plan No. 5 for the Department of Human Services and Department of Corrections Act of 1998,” was introduced in Council and assigned Bill No. 12-452, which was referred to the Committee on the Judiciary. The Bill was adopted on the first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 29, 1998, it was assigned Act No. 12-606 and transmitted to both Houses of Congress for its review. D.C. Law 12-256 became effective on April 20, 1999.

Legislative history of Law 12-261. — Law 12-261, the “Second Omnibus Regulatory Reform Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-845, which was referred to the Committee of the Whole. The Bill was adopted on the first and second readings on December 1, 1998 and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615 and transmitted to both Houses of Congress for its review. D.C. Law 12-261 became effective on April 20, 1999.

Resolutions. — Resolution 19-1, the “Rules for the Council of the District of Columbia, Council Period 19 Resolution of 2011,” was adopted effective January 3, 2011, and by D.C. Resolution 19-281, § 3, effective November 1, 2011, and by D.C. Law 19-124, § 501(b), effective April 27, 2012.

Editor’s notes. — Waiver of Congressional review for certain revenue bond acts: Section 1 of Pub. L. 99-242 amended § 2 of Pub. L. 99-216 to include also D.C. Laws 6-78 and 6-79. Section 2 provided that they should take effect as if included in Pub. L. 99-216, with certain restrictions.

Waiver of Congressional review for certain revenue bond acts: Section 136(a) of H.R. 3067, amended by H.R. 99-419, incorporated in Pub. L. 99-190 by § 101(c), the D.C. Appropriation Act, 1986, provided that § 602(c) of the Self-Government Act (Pub. L. 93-198) shall not apply to certain acts authorizing the issuance of revenue bonds. Section 136(b) of H.R. 3067 provided that the subject revenue bond acts shall take effect on the date of enactment of the act. Pub. L. 99-190 was approved Dec. 19, 1985. The revenue bond acts subject to waiver of review, set forth in § 136(c) of H.R. 3067, are The Georgetown University Higher Education Facilities Revenue Bond Act of 1985 (D.C. Law 6-75), The Sibley Memorial Hospital Revenue Bond Act of 1985 (D.C. Law 6-70), The Forrest Marbury House Project Revenue Bond Act of

1985 (D.C. Law 6-86), The American University Revenue Bond Act of 1985 (D.C. Law 6-78), and The George Washington University Revenue Bond Act of 1985 (D.C. Law 6-79).

Section 2 of Pub. L. 99-216 also waived Congressional review for D.C. Laws 6-75 and 6-70, providing that they take effect on the date of enactment of the public law, which was approved Dec. 26, 1985.

Exchange of property: Act of February 26, 1981, D.C. Law 3-116, authorized the Mayor to transfer the Old Benning Road Elementary School to the Washington Metropolitan Area Transit Authority in exchange for the Brook Mansion and basic renovation thereof.

Act of February 24, 1984, D.C. Law 5-49, authorized the Mayor to exchange parcel 26¹/₁₃, owned by the District of Columbia, for parcel 26¹/₁₂, owned by the Potomac Electric Power Company (Ward 8).

Act of March 14, 1984, D.C. Law 5-68, authorized the Mayor to convey, by sale or exchange, in whole or in part, to the Washington Metropolitan Area Transit Authority certain real property owned in fee simple by the District for municipal use in Squares 3831 and 3828 and Parcel 1²³/₅₆.

Establishment and elimination of building restriction lines: Section 3 of D.C. Law 8-8 provided that following June 16, 1989, the Surveyor shall record a copy of this act and the Surveyor's plat filed under S.O. 87-394.

Conveyance of parcel 1³¹/₂₂₀: Section 2 of D.C. Law 6-164 provided that the Mayor is authorized to convey that portion of parcel 1³¹/₂₂₀ used by the Washington Metropolitan Area Transit Authority for parking lot and access road purposes, and may execute a deed or deeds for the conveyance of the real property.

Establishment and elimination of building restriction lines: Section 2 of D.C. Law 8-8 provided that (1) The building restriction line in Lot 26 in Square 1853 on the north side of Reno Road, N.W., as shown on the Surveyor's plat filed under S.O. 87-394, is unnecessary for public purposes and it was ordered eliminated; and (2) A building restriction line in Lot 26 in Square 1853 on the south side of Ingomar Street, N.W., as shown on the Surveyor's plat filed under S.O. 87-394, is necessary for public purposes and it was ordered established.

Transfer of the Office of the Surveyor: Sections 5002 through 5004 of D.C. Law 12-261 provided that pursuant to this section, the Office of the Surveyor, in the Department of Public Works ("DPW"), established by Reorganization Plan No. 2 of 1982, effective December 8, 1982, and transferred to DPW under Reorganization Plan No. 4 of 1983, effective March 1, 1984, is hereby transferred to the Department of Consumer and Regulatory Affairs ("DCRA"). The purpose of the transfer is to provide for the more efficient operation of the

Office of the Surveyor and the development process in the District of Columbia. All of the duties and functions assigned or delegated to the existing office of the Surveyor in DPW, are hereby transferred to the Office of the Surveyor in DCRA, along with all positions, property, records, and unexpended balances of appropriation, allocations and other funds available or to be made available relating to the above functions.

Reorganization Plan No. 5 for the Department of Human Services and Department of Corrections: Section 2 of D.C. Law 12-256 provided for the reorganization, pursuant to subsection (b) of this section, of the Department of Human Services in transferring the Bureau of Correctional Services from the Department of Human Services to the Department of Corrections as set forth in § 3 of D.C. Law 12-256. D.C. Law 12-256.

Rules Resolution for the Council of the District of Columbia Council Period XI: Pursuant to Resolution 11-1, effective January 3, 1995, the Council provided rules of organization and procedure for the Councils of the District of Columbia during Council Period XI.

Rules Resolution for the Council of the District of Columbia, Council Period XI, Federal-Aid Highway Contract Review Amendment Resolution of 1996: Pursuant to Resolution 11-368, effective June 4, Council amended the Rules Resolution for the Council of the District of Columbia, Council Period XI to permit proposed federal-aid highway contracts in excess \$1 million to be transmitted to the Council for review during a Council recess, to permit the time period for Council review of a proposed federal-aid highway contract in excess of \$1 million to begin on the day following its receipt by the Council and to permit the establishment of a procedure to permit the Council to complete its review of proposed federal-aid highway contracts in excess of \$1 million upon approval the Department of Public Works' annual capital program.

Rules Resolution for the Council of the District of Columbia, Council Period XI, Contract Review Emergency Amendment Resolution of 1996: Pursuant to Resolution 11-476, effective July 17, Council amended, on an emergency basis, the Rules Resolution for the Council of the District of Columbia, Council Period XI to permit specified proposed contracts in excess of \$1 million to be transmitted to the Council for review during a Council recess, and to permit the time period for Council review of specified proposed contracts in excess of \$1 million to begin on the day following its receipt by the Council.

Rules Resolution for the Council of the District of Columbia, Council Period XII, and the MOU on the President's Plan Resolution of 1997: Pursuant to Resolution 12-047, effective

Mar. 4, 1997, the Rules Resolution for Council Period XII, and the MOU on the President's Plan Resolution, were adopted.

Authority Recommendation Procedure and Fiscal Impact Rules Amendment Resolution of

1997: Pursuant to Resolution 12-100, effective May 6, 1997, the Authority Recommendation Procedure and Fiscal Impact Rules Amendment Resolution of 1997 was adopted.

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Appointment clause.

Congress, by authorizing the District of Columbia city council to close city streets, did not make councilmen "officers of the United States," and councilmen, who passed acts closing portion of particular street and transferring title to that portion of the street to developers who planned to create international trade center covering two city blocks on that portion of the street, did not exercise significant Federal authority; therefore, acts were not invalid under the appointments clause. U.S. Const. Art. 2, § 2, cl. 2. *Techworld Dev. Corp. v. D.C. Preservation League*, 648 F. Supp. 106, 1986 U.S. Dist. LEXIS 21851 (1986), vacated by, remanded by 1987 U.S. App. LEXIS 18346 (D.C. Cir. June 2, 1987).

Building code regulations.

Authority of Commissioners of District of Columbia to promulgate building code provisions relating to fire regulations which had to be complied with before new occupancy permits for rooming houses would be issued could not be found in congressional grant of authority to issue either police regulations or building regulations, but was discoverable in grant of au-

thority to promulgate regulations "for protection against fire." D.C. Code 1961, §§ 1-226, 1-228, 5-317. *Jones v. District of Columbia*, 212 F.Supp. 438, 1962 U.S. Dist. LEXIS 4749 (D.D.C.1962).

Criminal laws.

Council of the District of Columbia enjoys broad authority to classify an act as a crime. D.C. Code 1981, § 1-227. *Colbert v. United States*, 601 A.2d 603, 1992 D.C. App. LEXIS 18 (1992).

Intent of Home Rule Act provision, which prohibits District of Columbia Council from enacting any act with respect to any provision of any law codified in title of District of Columbia Code relating to crimes and treatment of prisoners during 24 months following date that members of Council first elected pursuant to such act were to take office, was merely to place time constraint on Council's authority to make changes in local criminal statutes until such time as local law revision commission could make a complete reevaluation and revision of District's criminal code. D.C. Code §§ 1-147(a)(9), 22-3201 et seq. *McIntosh v. Washington*, 395 A.2d 744, 1978 D.C. App. LEXIS 365 (1978).

Emergency legislation.

Passage by the District of Columbia Council of an emergency repealer did not permanently deprive act of legal effect. D.C. Code 1981, §§ 1-229(a), 1-233(c)(1). *Atkinson v. District of Columbia Bd. of Elections & Ethics*, 597 A.2d 863, 1991 D.C. App. LEXIS 279 (1991).

District of Columbia Council did not exceed its emergency legislative authority under Home Rule Act in enacting second, substantially identical 90-day emergency act under expedited procedures to provide extension of law to preserve status quo and to bridge gap that would otherwise inevitably occur when initial Emergency Act expired before conclusion of congressional review period of 60 days on identical legislation enacted by Council after two readings; when Council has not bypassed second reading and congressional review requirements, 90-day limitation on Council's authority to enact Emergency Act is properly viewed, as part of legislative scheme, as applying only to act and not to its substance. D.C. Code 1981, §§ 1-233(c), 22-101 et seq., 23-101 et seq., 24-103 et seq. *United States v. Alston*,

580 A.2d 587, 1990 D.C. App. LEXIS 218 (1990).

District of Columbia Council did not abuse its emergency powers under Home Rule Act passing second emergency act under determination that it was necessary to retain status quo, in relation to first emergency act authorizing use of preventive detention in imposing enhanced penalties for certain offenses, following expiration of first emergency act before effective date of temporary act awaiting congressional review; where Council has determined that emergency legislation should remain in effect for more than 90 days and has taken all reasonable actions to ensure that its legislation, in form enacted after two readings, is presented to Congress for review without unreasonable delay, Council acts within its legislative authority under Home Rule Act when it enacts successive substantially similar Emergency Act in order to maintain status quo during congressional review period. D.C. Code 1981, § 1-229(a). *United States v. Alston*, 580 A.2d 587, 1990 D.C. App. LEXIS 218 (1990).

When District of Columbia council, by two-thirds vote after single reading, enacts legislation in response to emergency circumstances, as authorized by statute, act is to be effective for period of not to exceed 90 days, and council has no authority to pass another substantially identical emergency act in response to same emergency. District of Columbia Self-Government and Governmental Reorganization Act, § 1 et seq., D.C. Code preceding section 1-101; D.C. Code §§ 1-124, 1-126, 1-144(c, e), 1-146(a), 1-147(c)(1, 2), 22-101 et seq., 23-101 et seq., 24-104 et seq., 29-801; U.S. Const. Art. 1, § 8, cl. 17. *District of Columbia v. Washington Home Ownership Council, Inc.*, 415 A.2d 1349, 1980 D.C. App. LEXIS 305 (1980).

Federal savings statute.

Federal savings statute applied to one-day gap between expiration of first emergency act and effective date of second emergency act by District of Columbia Council so as to preserve defendant's prosecution for offenses under first emergency act; first emergency act did not expressly provide for abatement of prosecutions under it upon its expiration. D.C. Code 1981, § 1-229(a); 1 U.S.C. § 109. *United States v. Alston*, 580 A.2d 587, 1990 D.C. App. LEXIS 218 (1990).

Federal supremacy.

Federal statutes prevail over local regulations when the two collide or are otherwise inconsistent in their effects and, correlatively, constitutionally grounded federal operations may not, absent congressional consent, be thwarted by local fiat. U.S. Const. Art. 6, cl. 2. *Don't Tear It Down, Inc. v. Pennsylvania Ave.*

Dev. Corp., 642 F.2d 527, 1980 U.S. App. LEXIS 14756 (C.A.D.C. 1980).

In situations where federal and local enactments overlap in their effects on nongovernmental activities, proper approach is to reconcile operation of both statutory schemes with one another rather than holding one completely ousted. U.S. Const. Art. 6, cl. 2. *Don't Tear It Down, Inc. v. Pennsylvania Ave. Dev. Corp.*, 642 F.2d 527, 1980 U.S. App. LEXIS 14756 (C.A.D.C. 1980).

Where local control over federal activity would obstruct achievement of an explicit congressional objective, an authorization of local regulation is found only when and to extent there is a clear congressional mandate, specific congressional action that makes authorization of local regulation clear and unambiguous. U.S. Const. Art. 6, cl. 2. *Don't Tear It Down, Inc. v. Pennsylvania Ave. Dev. Corp.*, 642 F.2d 527, 1980 U.S. App. LEXIS 14756 (C.A.D.C. 1980).

Historical preservation.

Closing of portion of particular street in the District of Columbia and transferring title to that portion of the street to developers who planned to create international trade center covering two city blocks on that portion of the street was not federal "undertaking," for purposes of the National Historic Preservation Act; therefore, fact that the advisory council on historic preservation was not given opportunity to provide nonbinding recommendations concerning the closing did not invalidate the closing. D.C. Code 1981, § 7-422; National Historic Preservation Act, §§ 1, 106, as amended, 16 U.S.C. §§ 470, 470f. *Techworld Dev. Corp. v. D.C. Preservation League*, 648 F. Supp. 106, 1986 U.S. Dist. LEXIS 21851 (1986), vacated by, remanded by 1987 U.S. App. LEXIS 18346 (D.C. Cir. June 2, 1987).

Initiatives.

— Administrative or legislative matters, initiatives.

Proposed District of Columbia initiative, substantive effect of which would be to amend general capital construction statute removing authorization for convention center and also to repeal law providing for its operation did not address merely administrative concerns or impermissibly interfere with execution of existing law and thus was "legislative" in both its substantive and final aspects and did not violate rule that initiative cannot extend to administrative matters. (Per Ferren, J., with two Judges concurring and two Judges concurring in result.) D.C. Code 1973, § 9-220(a); D.C. Code 1980 Supp. § 1-181(b). *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

— In general.

Proposed initiative, which sought to bar con-

struction and operation of convention center, and which represented effort through both substantive and fiscal means to reverse legislative policy determination that District of Columbia should build and operate convention center, proposed a "law" within meaning of District of Columbia charter amendments relating to initiative proposals. D.C. Code 1980 Supp. § 1-181(a). *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

Because an initiative may establish a law, it must include a bill, and thus neither District of Columbia Board of Elections and Ethics nor court truly can determine whether initiative conforms to limitations on initiative right unless it scrutinizes very bill that would become law. (Per Ferren, J., with two Judges concurring and two Judges concurring in result.) D.C. Code 1980 Supp. §§ 1-181 to 1-187, 1-181(a). *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

Initiative, as circulated on petitions, cannot lawfully be changed in any material respect for submission to District of Columbia voters, and thus attempt to submit initiative measure construed to prohibit only future budget requests for convention center, when initiative on its face purported to prohibit expenditure of appropriated funds as well as future budget requests, as well as initiative measure which constituted impermissible, substantive revision of original bill as summarized on petitions were correctly rejected. (Per Ferren, J., with two Judges concurring and two Judges concurring in result.) D.C. Code 1980 Supp. §§ 1-182, 1-183, 1-1116(i), k). *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

District of Columbia Council, pursuant to its powers of ordinary legislation, can remove substantive authorization for funded project but, to extent Congress has appropriated funds for project, council can halt further expenditure only through more elaborate requirements of budget process, even though project has been formally deauthorized, and thus substantial deauthorization by council can halt funded project during current fiscal year only if implemented by supplemental budget request act followed by congressional supplemental appropriations act. (Per Ferren, J., with two Judges concurring and two Judges concurring in result.) Budget and Accounting Act, 1921, § 201(a)(b), 31 U.S.C. § 11(b); D.C. Code 1978 Supp. §§ 47-221(c), 47-224. *Convention Center Referendum Committee v. District of Columbia*

Bd. of Elections & Ethics, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

— Laws appropriating funds, initiatives.

By-pass approach permitting allocation of revenues for specific purposes by initiative, but requiring further legislative action in order to appropriate those revenues, is deficient as applied to District of Columbia in which allocation and appropriation functions are divided between Congress and District of Columbia Council. D.C. Code 1981, §§ 1-201(a), 1-227, 1-227(e), 1-229(a), 47-301, 47-301(a)(1, 3-6), 47-313(c, d), 47-304, 47-305, 47-3405. *Hessey v. District of Columbia Bd. of Elections & Ethics*, 601 A.2d 3, 1991 D.C. App. LEXIS 318 (1991).

Limitation in District of Columbia initiative statute prohibiting electors from proposing laws appropriating funds applies to more than Budget Request Act; language of limitation must refer to council's role in District government's budget process. D.C. Code 1981, §§ 1-227(e, f), 1-229(a), 1-233(c), 1-281(a), 1-285, 47-304, 47-313(a). *Hessey v. District of Columbia Bd. of Elections & Ethics*, 601 A.2d 3, 1991 D.C. App. LEXIS 318 (1991).

"Appropriations" when used in connection with functions of District of Columbia Mayor and council in District's budget process refers to discretionary process by which revenues are identified and allocated among competing programs and activities. D.C. Code 1981, § 1-227. *Hessey v. District of Columbia Bd. of Elections & Ethics*, 601 A.2d 3, 1991 D.C. App. LEXIS 318 (1991).

Exception to District of Columbia initiative right for "laws appropriating funds" does not preclude initiatives that establish substantive authorization for new project, that repeal existing substantive authorization for program without rescinding its current funding, or that prohibit future budget requests. (Per Ferren, J., with two Judges concurring and two Judges concurring in result.) D.C. Code 1980 Supp. §§ 1-181(a), 1-1116(k)(7). *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

Exception to District of Columbia initiative right for "laws appropriating funds" constitutes operative, substantive limitation on initiative right. (Per Ferren, J., with two Judges concurring and two Judges concurring in result.) D.C. Code 1980 Supp. §§ 1-181(a), 1-1116(k)(7). *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

Amendment which barred any initiative that would negate or limit a budget request act of District of Columbia Council properly specified limitations that charter amendments placed on

initiative right and thus limitations specified by amendment were congruent, with respect to initiatives that contravene existing budget request acts with those inherent in underlying "laws appropriating funds" exception to initiative right. (Per Ferren, J., with two Judges concurring and two Judges concurring in result.) D.C. Code 1980 Supp. §§ 1-181(a), 1-1116(k)(7), (l). *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

Proposed initiative, which sought to bar construction and operation of District of Columbia convention center by repealing underlying substantive authorization for construction and operation of center and by barring further expenditure of appropriated funds and preventing future appropriation requests, would interdict expenditure of currently appropriated funds and thus was barred by exception to initiative right for "laws appropriating funds" as reflected in amendment prohibiting initiatives that contravene existing budget request act. (Per Ferren, J., with two Judges concurring and two Judges concurring in result.) D.C. Code 1980 Supp. §§ 1-181(a), 1-1116(k)(7), (l). *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

Exception to District of Columbia initiative right for "laws appropriating funds" bars any initiative that would halt a project to the extent funds have been requested or appropriated, but leaves within scope of initiative right the power to stop project as of end of fiscal period for which funds have been requested or appropriated, and thus "laws appropriating funds" exception prevents electorate from using initiative to adopt budget request act or make some other affirmative effort to appropriate or to block expenditure of appropriated funds. (Per Ferren, J., with two Judges concurring and two Judges concurring in result.) D.C. Code 1980 Supp. §§ 1-181(a), 1-1116(k)(7). *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

— Repeal or amendment, initiatives.

The Council of the District of Columbia has authority to repeal, or to amend in more than technical fashion, laws adopted through initiative process. D.C. Code 1981, §§ 1-204, 1-227(a), 1-281 et seq., 1-285. *Atchison v. District of Columbia*, 585 A.2d 150, 1991 D.C. App. LEXIS 3 (1991).

Legislation by Majority vote.

Purpose of District of Columbia Home Rule Act provision empowering legislation by majority vote after two readings, at least 13 days apart, was to give notice of pending proposal so

that public and interested parties could discuss legislation before passage. D.C. Code § 1-146(a). *District of Columbia v. Washington Home Ownership Council, Inc.*, 415 A.2d 1349, 1980 D.C. App. LEXIS 305 (1980).

Nature of powers.

District of Columbia, as sovereign, has inherent right to control exercise of police powers within its territory. *State of Maryland v. Barry*, 604 F. Supp. 495, 1985 U.S. Dist. LEXIS 22165 (1985).

Act of Congress, while Congress is acting as District of Columbia legislature, although local in scope, is nevertheless not analogous to state law enacted by independent legislature. *ITEL Corp. v. District of Columbia*, 448 A.2d 261, 1982 D.C. App. LEXIS 394 (1982), writ of certiorari denied by 459 U.S. 1087, 103 S. Ct. 570, 74 L. Ed. 2d 932, 1982 U.S. LEXIS 4710, 51 U.S.L.W. 3460 (1982).

Procedures, generally.

Formal verification by Secretary of Council of vote count and required readings of bill is not precondition to authoritative passage of public law. D.C. Code 1981, §§ 1-227, subds. 441(a), 445, 446, 1-229(a). *German v. United States*, 525 A.2d 596, 1987 D.C. App. LEXIS 353 (1987), writ of certiorari denied by 484 U.S. 944, 108 S. Ct. 331, 98 L. Ed. 2d 358, 1987 U.S. LEXIS 4655, 56 U.S.L.W. 3338 (1987).

Procurement authority.

Procurement Practices Act supersedes any authority Mayor otherwise might have to appeal Contract Appeals Board's (CAB) bid protest decision. D.C. Code 1981, §§ 1-227, 1-242, 1-361, 1-1181.1 et seq. *Francis v. Recycling Solutions*, 695 A.2d 63, 1997 D.C. App. LEXIS 138 (1997).

Council of District of Columbia has no power to erect its own mechanism of individualized contract review by use of its resolution authority; individual procurement contracting decisions are not actions of kind historically or traditionally transmitted by mayor to council pursuant to District of Columbia Self-Government and Governmental Reorganization Act. *District of Columbia Self-Government and Governmental Reorganization Act*, § 412, 87 Stat. 774; D.C. Code 1981, § 1-229(a)(1, 2). *Wilson v. Kelly*, 615 A.2d 229, 1992 D.C. App. LEXIS 270 (1992).

Property.

— Taxation of personal property.

Where tax of personal property was enacted not by independent sovereign, or even by partially independent governmental unit such as District of Columbia government, but by Congress itself, implied exemption for privately owned property located on federal land was not

necessary to protect national government from unwanted intrusions by lesser governmental entities. *ITEL Corp. v. District of Columbia*, 448 A.2d 261, 1982 D.C. App. LEXIS 394 (1982), writ of certiorari denied by 459 U.S. 1087, 103 S. Ct. 570, 74 L. Ed. 2d 932, 1982 U.S. LEXIS 4710, 51 U.S.L.W. 3460 (1982).

— Taxation of real property.

In light of provisions of District of Columbia Real Property Tax Revision Act of 1974, District of Columbia was acting pursuant to express authority and in timely and appropriate fashion in enacting regulation providing that real property, to be eligible for exemption from taxation, must be concurrently owned and used by taxpayer. D.C. Code §§ 47-641(c, e, f), 47-801a(j). *District of Columbia v. Catholic University of America*, 397 A.2d 915, 1979 D.C. App. LEXIS 292 (1979).

Section of regulation providing that real property, to be eligible for exemption from taxation, was to be concurrently occupied and used, as well as owned, by taxpayer, was invalid as being, at time it was promulgated, inconsistent with statute providing exemption from taxation for buildings belonging to and operated by nonprofit schools, colleges and universities as it had been interpreted, and inconsistent with legislative history of enabling statute; therefore, buildings owned by university which was nonprofit corporation otherwise qualified for statutory exemption were entitled to tax-exempt status even though university did not occupy and use them during entire tax year. D.C. Code §§ 47-641 et seq., 47-801a(j). *District of Columbia v. Catholic University of America*, 397 A.2d 915, 1979 D.C. App. LEXIS 292 (1979).

— Use and regulation.

Acts, which were passed by the District of Columbia city council closing portion of particular street and transferring title to that portion of the street to developers, who planned to create international trade center covering two city blocks on that portion of the street, were valid exercises of council's authority under the Home Rule Act, even though the HRA prohibited council from passing Acts concerning "functions or property of the United States" and even though title to street in question was vested in the United States. D.C. Code 1981, §§ 1-211 et seq., 1-233(a)(3). *Techworld Dev. Corp. v. D.C. Preservation League*, 648 F. Supp. 106, 1986 U.S. Dist. LEXIS 21851 (1986), vacated by, remanded by 1987 U.S. App. LEXIS 18346 (D.C. Cir. June 2, 1987).

Referenda.

Emergency Repealer Act directed to previously adopted Act imposing strict liability on manufacturers of assault weapons did not nullify the Act, and subsequent Act repealing the

Assault Weapon Manufacturing Strict Liability Act was a proper matter for referendum. D.C. Code 1981, §§ 1-229(a), 1-233(c)(1). *Atkinson v. District of Columbia Bd. of Elections & Ethics*, 597 A.2d 863, 1991 D.C. App. LEXIS 279 (1991).

Regulation of firearms.

Section of District of Columbia Code empowering council to make all regulations deemed necessary for regulation of firearms, a section of act prohibiting the killing of wild birds and wild animals, conferred power to regulate firearms for the protection of people as well as wildlife. D.C. Code §§ 1-227, 22-3201 to 22-3217. *Maryland & District of Columbia Rifle & Pistol Asso. v. Washington*, 442 F.2d 123, 1971 U.S. App. LEXIS 11707 (C.A.D.C. 1971).

Unsuccessful efforts by board of commissioners to obtain legislation supplementing 1932 gun control law enacted for the District of Columbia, and congressional inaction on the commissioners' requests, did not indicate doubt as to commissioners' authority to adopt gun control regulations and did not obliterate authority derived from 1906 statute authorizing gun control regulations. D.C. Code §§ 1-227, 22-3201 to 22-3217. *Maryland & District of Columbia Rifle & Pistol Asso. v. Washington*, 442 F.2d 123, 1971 U.S. App. LEXIS 11707 (C.A.D.C. 1971).

District of Columbia Council had power, by way of congressional delegation, to make regulations relating to firearms. U.S. Const. art. 1, § 8, cl. 17; Act Aug. 23, 1958, 72 Stat. 814; D.C. Code § 1-227; Act July 8, 1932, 47 Stat. 650. *Maryland & Dist. of Columbia Rifle & Pistol Asso. v. Washington*, 294 F. Supp. 1166, 1969 U.S. Dist. LEXIS 9224 (D.D.C.1969), affirmed by 442 F.2d 123, 142 U.S. App. D.C. 375, 1971 U.S. App. LEXIS 11707 (1971).

Home Rule Act's provision vesting legislative power in District of Columbia Council afforded Council authority to enact Firearms Control Regulations Act of 1975, notwithstanding Home Rule Act provision that Council was to have no authority to enact any act with respect to any provision of title of District of Columbia Code relating to criminal procedure or with respect to any provision of titles relating to crimes and treatment of prisoners during 24 months after members of Council first elected pursuant to such Act were to take office. D.C. Code §§ 1-144(a), 1-147(a)(9), 6-1801 et seq., 22-101 et seq., 23-101 et seq., 24-103 et seq. *McIntosh v. Washington*, 395 A.2d 744, 1978 D.C. App. LEXIS 365 (1978).

Statute authorizing superintendent of police of District of Columbia to issue a license to carry a concealed weapon when it appears that the applicant has good reason to fear injury to his person or property or has any other proper reason for carrying a pistol and that he is a

suitable person to be so licensed did not preempt field of gun legislation and preclude chief of police from adopting additional license information requirements and criteria, specifically requirement that applicant present substantial evidence of a specific threat to his life that cannot be alleviated by use of conventional methods; such additional information is relevant to licensing decision and failure to furnish it forms an adequate basis for denial of the license. D.C. Code §§ 1-227, 22-3206. *Jordan v. District of Columbia Board of Appeals & Review*, 315 A.2d 153, 1974 D.C. App. LEXIS 365 (1974).

Whatever rule is used in District of Columbia to determine eligibility for a license to carry a handgun, it must be adopted, published, and applied according to law, and remain consistent with congressional policy. D.C. Code §§ 1-227, 1-1502, 1-1505 to 1-1507, 22-3206. *Jordan v. District of Columbia Board of Appeals & Review*, 315 A.2d 153, 1974 D.C. App. LEXIS 365 (1974).

Applications for licenses to carry concealed weapons should be treated under proper regulatory criteria duly adopted. D.C. Code §§ 1-227, 1-1502, 1-1505 to 1-1507, 22-3206. *Jordan v. District of Columbia Board of Appeals & Review*, 315 A.2d 153, 1974 D.C. App. LEXIS 365 (1974).

Review.

While judgment of Court of Appeals may be informed by sensitivity to plight of the poor, Court of Appeals cannot reorder District of Columbia's fiscal priorities to provide better health care for its citizens since Court lacks expertise to duplicate District's labors in trying to stretch insufficient budget to meet all its needs. *Spivey v. Barry*, 665 F.2d 1222, 1981 U.S. App. LEXIS 17915 (C.A.D.C. 1981).

Determining whether District of Columbia Council exceeded its authority under Home Rule Act in enacting legislation is question of

statutory interruption which requires court to focus on intent of Congress. D.C. Code 1981, § 1-229(a). *United States v. Alston*, 580 A.2d 587, 1990 D.C. App. LEXIS 218 (1990).

In reviewing District of Columbia Council's determination of what constitutes emergency under Home Rule Act authorizing emergency legislation, Court of Appeals' review is deferential. D.C. Code 1981, § 1-229(a). *United States v. Alston*, 580 A.2d 587, 1990 D.C. App. LEXIS 218 (1990).

Withdrawal from Congressional consideration.

Emergency Repealer Act and Temporary Repealer Act, directed at previously passed Act imposing strict liability on manufacturers of assault weapons, were attempts to repeal that Act and not attempts to withdraw it from congressional consideration. D.C. Code 1981, §§ 1-229(a), 1-233(c)(1). *Atkinson v. District of Columbia Bd. of Elections & Ethics*, 597 A.2d 863, 1991 D.C. App. LEXIS 279 (1991).

Passage by the District of Columbia Council of temporary, emergency, and full repeals of previously adopted Act which had been sent to Congress for consideration did not affect the process of congressional layover for the original Act. D.C. Code 1981, § 1-233(c)(1). *Atkinson v. District of Columbia Bd. of Elections & Ethics*, 597 A.2d 863, 1991 D.C. App. LEXIS 279 (1991).

Once act adopted by the District of Columbia Council has been transmitted to Congress, legislative process of the District insofar as the Council and mayor are concerned is at an end, and the only circumstances that can prevent the act from becoming law are the passage of a joint resolution by Congress or the filing of a valid referendum petition. D.C. Code 1981, §§ 1-229(a), 1-233(c)(1), 1-282(b)(1). *Atkinson v. District of Columbia Bd. of Elections & Ethics*, 597 A.2d 863, 1991 D.C. App. LEXIS 279 (1991).

Subpart 2—Organization and Procedure of the Council.

§ 1-204.11. The Chairman.

(a) The Chairman shall be the presiding officer of the Council.

(b) When the Office of Mayor is vacant, the Chairman shall act in his stead. While the Chairman is Acting Mayor he shall not exercise any of his authority as Chairman or member of the Council.

(Dec. 24, 1973, 87 Stat. 788, Pub. L. 93-198, title IV, § 411.)

Prior Codifications. — 1981 Ed., § 1-228.

1973 Ed., § 1-145.

§ 1-204.12. Acts, resolutions, and requirements for quorum.

(a) The Council, to discharge the powers and duties imposed herein, shall pass acts and adopt resolutions, upon a vote of a majority of the members of the Council present and voting, unless otherwise provided in this chapter or by the Council. Except as provided in the last sentence of this subsection, the Council shall use acts for all legislative purposes. Each proposed act (other than an act to which § 1-204.46 applies) shall be read twice in substantially the same form, with at least 13 days intervening between each reading. Upon final adoption by the Council each act shall be made immediately available to the public in a manner which the Council shall determine. If the Council determines, by a vote of two-thirds of the members, that emergency circumstances make it necessary that an act be passed after a single reading, or that it take effect immediately upon enactment, such act shall be effective for a period of not to exceed 90 days. Resolutions shall be used (1) to express simple determinations, decisions, or directions of the Council of a special or temporary character; and (2) to approve or disapprove proposed actions of a kind historically or traditionally transmitted by the Mayor, the Board of Elections, Public Service Commission, Armory Board, Board of Education, the Board of Trustees of the University of the District of Columbia, or the Convention Center Board of Directors to the Council pursuant to an act. Such resolutions must be specifically authorized by that act and must be designed to implement that act.

(b) A special election may be called by resolution of the Council to present for an advisory referendum vote of the people any proposition upon which the Council desires to take action.

(c) A majority of the Council shall constitute a quorum for the lawful convening of any meeting and for the transaction of business of the Council, except a lesser number may hold hearings.

(Dec. 24, 1973, 87 Stat. 788, Pub. L. 93-198, title IV, § 412; Oct. 27, 1978, 92 Stat. 2023, Pub. L. 95-526; Oct. 12, 1984, 98 Stat. 1974, Pub. L. 98-473, § 131(c).)

Cross references. — Administrative procedure, municipal regulations, see § 2-552.

Codification and publication of acts and resolutions, see § 2-601 et seq.

Office of energy, emergency energy shortage contingency plan, see § 2-904.

Section references. — This section is referred to in § 1-206.02.

Prior Codifications. — 1981 Ed., § 1-229. 1973 Ed., § 1-146.

Legislative history of Law 8-11. — Law 8-11 was introduced in Council and assigned Bill No. 8-179. The Bill was adopted on first and second readings on April 4, 1989 and April 18, 1989, respectively. Signed by the Mayor on April 27, 1989, it was assigned Act No. 8-27 and

transmitted to both Houses of Congress for its review.

Legislative history of Law 8-13. — Law 8-13 was introduced in Council and assigned Bill No. 8-238. The Bill was adopted on first and second readings on April 4, 1989 and April 18, 1989, respectively. Signed by the Mayor on April 27, 1989, it was assigned Act No. 8-29 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-85. — Law 8-85 was introduced in Council and assigned Bill No. 8-469. The Bill was adopted on first and second readings on November 14, 1989, and December 5, 1989, respectively. Signed by the Mayor on December 21, 1989, it was assigned

Act No. 8-135 and transmitted to both Houses of Congress for its review.

Resolutions. — Resolution 14-494, the “Establishment of an Office of the District Attorney Advisory Referendum Approval Resolution of 2002”, was approved effective July 19, 2002.

Editor’s notes. — Temporary legislation: Pursuant to (a), the Council often adopts temporary legislation in conjunction with emergency legislation which takes effect after a period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto), as provided in § 1-206.02(c). Such legislation carries an expiration provision limiting its application, usu-

ally, to 225 days. Amendatory temporary legislation is treated under the code section affected; following this, it is listed in the D.C. Laws Not Codified table found in the Tables Volume.

Emergency legislation: Pursuant to (a), the Council adopts emergency legislation which takes effect upon its enactment (approval by the Mayor, or in the event of veto by the Mayor, override of the veto by the Council) and which remain in effect for no longer than 90 days. Amendatory emergency acts are treated under the Code section affected; otherwise the act is listed in the Emergency Act Table found in the Tables Volume.

Fiscal year: See Historical and Statutory Notes following § 1-203.03.

CASE NOTES

ANALYSIS

Congressional review.
Construction and application.
Emergency legislation.
Federal savings statute.
Initiatives.
Jurisdiction.
Laws appropriating funds.
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Referenda.
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Congressional review.

Where referendum was passed that preserved District of Columbia’s Assault Weapon Manufacturing Strict Liability Act and rejected legislation repealing Liability Act, new 30-day period for congressional review of Liability Act began on day after result of referendum was announced; with that announcement, Congress was on notice that, absent congressional resolution of disapproval, Liability Act would take effect by operation of law on expiration of legislation temporarily repealing Liability Act. D.C. Code 1981, § 1-233(c)(1). *Bliley v. Kelly*, 23 F.3d 507, 1994 U.S. App. LEXIS 11716 (C.A.D.C. 1994).

Construction and application.

This section does not allow the District of Columbia Council to require approval of certain individual contracts by means of a resolution of the Council. *Wilson v. Dixon*, 120 WLR 33 (Super. Ct. 1992).

Emergency legislation.

Exigent economic circumstances that threaten District’s limited resources and serious budget crisis brought on by declining revenues and increases in uncontrollable spending are sufficient justifications for emergency legis-

lation. D.C. Code 1981, § 1-229(a). *Lampkin v. District of Columbia*, 886 F. Supp. 56, 1995 U.S. Dist. LEXIS 6813 (1995).

Sufficient presumption that legislation adopted by district was validly adopted as emergency legislation was established where chief administrative officer of district council testified that she timely received notice of legislation and that custom of office was to post notice in district building, even though officer could not specifically recall posting notice. D.C. Code 1981, § 1-229(a). *Lampkin v. District of Columbia*, 886 F. Supp. 56, 1995 U.S. Dist. LEXIS 6813 (1995).

Life of emergency act enacted by Council of District of Columbia is to be measured prospectively from date of enactment. D.C. Code 1981, § 1-229(a). *RDP Dev. Corp. v. District of Columbia*, 645 A.2d 1078, 1994 D.C. App. LEXIS 118 (1994).

Passage by the District of Columbia Council of an emergency repealer did not permanently deprive act of legal effect. D.C. Code 1981, §§ 1-229(a), 1-233(c)(1). *Atkinson v. District of Columbia Bd. of Elections & Ethics*, 597 A.2d 863, 1991 D.C. App. LEXIS 279 (1991).

Under substantial deference standard of judicial review, the Council of the District of Columbia was justified in concluding that immediate action was necessary to stem expenditure of funds in excess of appropriations caused by legislation dealing with shelter for homeless persons, thus justifying passage of emergency legislation limiting scope of prior legislation, notwithstanding contention that permanent legislation to repeal shelter legislation was introduced 16 months before declaration of emergency and that sponsors announced their intention to pass it as “emergency” act 100 days before Council fully did so. D.C. Code 1981, §§ 1-229(a), 3-601 to 3-607. *Atchison v. District of Columbia*, 585 A.2d 150, 1991 D.C. App. LEXIS 3 (1991).

District of Columbia Council did not abuse its emergency powers under Home Rule Act passing second emergency act under determination that it was necessary to retain status quo, in relation to first emergency act authorizing use of preventive detention in imposing enhanced penalties for certain offenses, following expiration of first emergency act before effective date of temporary act awaiting congressional review; where Council has determined that emergency legislation should remain in effect for more than 90 days and has taken all reasonable actions to ensure that its legislation, in form enacted after two readings, is presented to Congress for review without unreasonable delay, Council acts within its legislative authority under Home Rule Act when it enacts successive substantially similar Emergency Act in order to maintain status quo during congressional review period. D.C. Code 1981, § 1-229(a). *United States v. Alston*, 580 A.2d 587, 1990 D.C. App. LEXIS 218 (1990).

Once emergency legislation has expired, legislature has no authority to pass another substantially identical emergency act in response to same emergency. D.C. Code 1981, § 1-229(a). *In re O.M.*, 565 A.2d 573, 1989 D.C. App. LEXIS 214 (1989), writ of certiorari denied by 494 U.S. 1086, 110 S. Ct. 1824, 108 L. Ed. 2d 953, 1990 U.S. LEXIS 1859, 58 U.S.L.W. 3658 (1990).

The Illegal Drug Zone Emergency Act (D.C. Act 8-19) is unconstitutional because it allows arrest without evidence of any illegal purpose. *United States v. Kennedy*, 118 WLR 873 (Super. Ct. 1990).

Continuation of emergency conditions does not justify enactment of second or successive acts. The second emergency act amending District of Columbia criminal is invalid. *United States v. Kennedy*, 118 WLR 873 (Super. Ct. 1990).

Federal savings statute.

Federal savings statute applied to one-day gap between expiration of first emergency act and effective date of second emergency act by District of Columbia Council so as to preserve defendant's prosecution for offenses under first emergency act; first emergency act did not expressly provide for abatement of prosecutions under it upon its expiration. D.C. Code 1981, § 1-229(a); 1 U.S.C. § 109. *United States v. Alston*, 580 A.2d 587, 1990 D.C. App. LEXIS 218 (1990).

Initiatives.

District of Columbia initiative power regarding laws is coextensive with council's power to pass acts except to extent that right of initiative is otherwise limited beyond limitations on legislative authority of council. D.C. Code 1981, §§ 1-229(a), 1-281(a). *Hessey v. District of Co-*

lumbia Bd. of Elections & Ethics, 601 A.2d 3, 1991 D.C. App. LEXIS 318 (1991).

Jurisdiction.

Court was not required to abstain, on Pullman abstention grounds, from considering whether second reading of amendment to alcoholic beverage legislation was required, in order for District of Columbia courts to consider novel question of local law; there were enough decisions interpreting Home Rule Act procedures to allow for federal court to rule on point. *DeCatur Liquors, Inc. v. District of Columbia*, 384 F.Supp.2d 58, 2005 U.S. Dist. LEXIS 15649 (2005), reversed by, remanded by, vacated by 478 F.3d 360, 375 U.S. App. D.C. 130, 2007 U.S. App. LEXIS 4240 (2007).

Federal district court had supplemental jurisdiction, over claims that provisions of District of Columbia Home Rule Act governing passage of legislation were violated in course of adopting amendment to statute declaring moratorium on sale for off-premises consumption of beer, malt liquor and ale in certain area, when there was direct federal constitutional challenge to amendment, as violating due process rights of licensees. *DeCatur Liquors, Inc. v. District of Columbia*, 384 F.Supp.2d 58, 2005 U.S. Dist. LEXIS 15649 (2005), reversed by, remanded by, vacated by 478 F.3d 360, 375 U.S. App. D.C. 130, 2007 U.S. App. LEXIS 4240 (2007).

Laws appropriating funds.

Limitation in District of Columbia initiative statute prohibiting electors from proposing laws appropriating funds applies to more than Budget Request Act; language of limitation must refer to council's role in District government's budget process. D.C. Code 1981, §§ 1-227(e, f), 1-229(a), 1-233(c), 1-281(a), 1-285, 47-304, 47-313(a). *Hessey v. District of Columbia Bd. of Elections & Ethics*, 601 A.2d 3, 1991 D.C. App. LEXIS 318 (1991).

By-pass approach permitting allocation of revenues for specific purposes by initiative, but requiring further legislative action in order to appropriate those revenues, is deficient as applied to District of Columbia in which allocation and appropriation functions are divided between Congress and District of Columbia Council. D.C. Code 1981, §§ 1-201(a), 1-227, 1-227(e), 1-229(a), 47-301, 47-301(a)(1, 3-6), 47-313(c, d), 47-304, 47-305, 47-3405. *Hessey v. District of Columbia Bd. of Elections & Ethics*, 601 A.2d 3, 1991 D.C. App. LEXIS 318 (1991).

Purpose.

Purpose of District of Columbia Home Rule Act provision empowering legislation by majority vote after two readings, at least 13 days apart, was to give notice of pending proposal so that public and interested parties could discuss legislation before passage. D.C. Code § 1-

146(a). District of Columbia v. Washington Home Ownership Council, Inc., 415 A.2d 1349, 1980 D.C. App. LEXIS 305 (1980).

Referenda.

Emergency Repealer Act directed to previously adopted Act imposing strict liability on manufacturers of assault weapons did not nullify the Act, and subsequent Act repealing the Assault Weapon Manufacturing Strict Liability Act was a proper matter for referendum. D.C. Code 1981, §§ 1-229(a), 1-233(c)(1). *Atkinson v. District of Columbia Bd. of Elections & Ethics*, 597 A.2d 863, 1991 D.C. App. LEXIS 279 (1991).

Review.

Nullification of amendment to liquor provisions of District of Columbia Code, providing for moratorium on sale of off-premises consumption of single units of beer, malt liquor and ale in specified area of District, due to failure to give notice of amendment content before amendment had second reading, did not nullify remainder of amendment. *DeCatur Liquors, Inc. v. District of Columbia*, 384 F.Supp.2d 58, 2005 U.S. Dist. LEXIS 15649 (2005), reversed by, vacated by, 478 F.3d 360, 375 U.S. App. D.C. 130, 2007 U.S. App. LEXIS 4240 (2007).

Determining whether District of Columbia Council exceeded its authority under Home Rule Act in enacting legislation is question of statutory interpretation which requires court to focus on intent of Congress. D.C. Code 1981, § 1-229(a). *United States v. Alston*, 580 A.2d 587, 1990 D.C. App. LEXIS 218 (1990).

In reviewing District of Columbia Council's determination of what constitutes emergency under Home Rule Act authorizing emergency legislation, Court of Appeals' review is deferential. D.C. Code 1981, § 1-229(a). *United States v. Alston*, 580 A.2d 587, 1990 D.C. App. LEXIS 218 (1990).

Statutory procedures.

Injury resulting from inability to sue for noneconomic loss resulting from automobile accident because of District of Columbia no-fault law was not fairly traceable to any violation of District of Columbia Self-Government Act requirement that bill be read twice in substantially the same form prior to enactment, so that automobile accident victim did not have standing to challenge the no-fault law on that basis. D.C. Code 1981, §§ 1-229(a), 35-2105(b)(6). *Dimond v. District of Columbia*, 792 F.2d 179, 1986 U.S. App. LEXIS 25293 (C.A.D.C. 1986).

Proposed amendment to District of Columbia Code was not "read" for second time, as required for passage under Home Rule Act, when there was no advance notification that amendment made substantial change in liquor laws

by declaring moratorium on sales for off-premises consumption of single units of beer, malt liquor and ale in specified area. *DeCatur Liquors, Inc. v. District of Columbia*, 384 F.Supp.2d 58, 2005 U.S. Dist. LEXIS 15649 (2005), reversed by, remanded by, vacated by 478 F.3d 360, 375 U.S. App. D.C. 130, 2007 U.S. App. LEXIS 4240 (2007).

Substantial change was made to District of Columbia Code, requiring second reading under Home Rule Act, when there was amendment to liquor provisions providing moratorium on sales for off-premises consumption of single units of beer, malt liquor and ale in specified area. *DeCatur Liquors, Inc. v. District of Columbia*, 384 F.Supp.2d 58, 2005 U.S. Dist. LEXIS 15649 (2005), reversed by, remanded by, vacated by 478 F.3d 360, 375 U.S. App. D.C. 130, 2007 U.S. App. LEXIS 4240 (2007).

Holders of off-premises liquor licenses had standing to claim that amendment to Omnibus Alcoholic Beverage Act (Omnibus Act), declaring moratorium on sales for off-premises consumption of single units of beer, malt liquor and ale in certain parts of district, was required by Home Rule Act to be read two times; there was showing of personal injury, based on argument that given more time to study amendment District of Columbia council would have realized that it was thinly-disguised variation of general ban earlier rejected by council. *DeCatur Liquors, Inc. v. District of Columbia*, 384 F.Supp.2d 58, 2005 U.S. Dist. LEXIS 15649 (2005), reversed by, remanded by, vacated by 478 F.3d 360, 375 U.S. App. D.C. 130, 2007 U.S. App. LEXIS 4240 (2007).

Plaintiffs did not have standing to challenge the District of Columbia Compulsory/No-Fault Motor Vehicle Insurance Act [D.C. Code 1981, § 35-2101 et seq.] on grounds that District of Columbia city council failed to comply with procedural requirements of the Self-Government Act requiring a bill to be read twice before passage [D.C. Code 1981, § 1-229(a)] as plaintiffs asserted nothing more than a generalized grievance alleging abstract injury in nonobservance of the Act. *Dimond v. District of Columbia*, 618 F. Supp. 519, 1984 U.S. Dist. LEXIS 10681 (1984), affirmed in part and reversed in part by 792 F.2d 179, 253 U.S. App. D.C. 111, 1986 U.S. App. LEXIS 25293 (1986).

Formal verification by Secretary of Council of vote count and required readings of bill is not precondition to authoritative passage of public law. D.C. Code 1981, §§ 1-227, subds. 441(a), 445, 446, 1-229(a). *German v. United States*, 525 A.2d 596, 1987 D.C. App. LEXIS 353 (1987), writ of certiorari denied by 484 U.S. 944, 108 S. Ct. 331, 98 L. Ed. 2d 358, 1987 U.S. LEXIS 4655, 56 U.S.L.W. 3338 (1987).

Withdrawal from Congressional consideration.

Counsel of District of Columbia's enactment of legislation temporarily repealing Assault

Weapon Manufacturing Strict Liability Act resulted in suspension of Congress' review period under Home Rule Act pending final action on Liability Act by District of Columbia; enactment of Emergency and Temporary Repealers relieved Congress of need to review legislation that Council itself was in process of repealing. D.C. Code 1981, § 1-233(c)(1). *Bliley v. Kelly*, 23 F.3d 507, 1994 U.S. App. LEXIS 11716 (C.A.D.C. 1994).

Circumstances did not warrant District of Columbia's city council's resort to its emergency legislative power as vehicle for amending State Revenue Officers Act of 1978, where concerns council sought to address by prohibiting state revenue agents of other states from coming into district for purposes of conducting surveillance of district liquor stores were not acute, but reoccurred at each holiday season, council had previously imposed 30-day registration requirement on out-of-state revenue agents, and council, anticipating precisely same situation following year, rather than timely acting on pending permanent legislation, again chose to resort to emergency powers, thus accomplishing same result as prior emergency act. D.C. Code 1981, § 4-1001 et seq. *State of Maryland v. Barry*, 604 F. Supp. 495, 1985 U.S. Dist. LEXIS 22165 (1985).

Once act adopted by the District of Columbia Council has been transmitted to Congress, legislative process of the District insofar as the Council and mayor are concerned is at an end,

and the only circumstances that can prevent the act from becoming law are the passage of a joint resolution by Congress or the filing of a valid referendum petition. D.C. Code 1981, §§ 1-229(a), 1-233(c)(1), 1-282(b)(1). *Atkinson v. District of Columbia Bd. of Elections & Ethics*, 597 A.2d 863, 1991 D.C. App. LEXIS 279 (1991).

Emergency Repealer Act and Temporary Repealer Act, directed at previously passed Act imposing strict liability on manufacturers of assault weapons, were attempts to repeal that Act and not attempts to withdraw it from congressional consideration. D.C. Code 1981, §§ 1-229(a), 1-233(c)(1). *Atkinson v. District of Columbia Bd. of Elections & Ethics*, 597 A.2d 863, 1991 D.C. App. LEXIS 279 (1991).

When District of Columbia council, by two-thirds vote after single reading, enacts legislation in response to emergency circumstances, as authorized by statute, act is to be effective for period of not to exceed 90 days, and council has no authority to pass another substantially identical emergency act in response to same emergency. District of Columbia Self-Government and Governmental Reorganization Act, § 1 et seq., D.C. Code preceding section 1-101; D.C. Code §§ 1-124, 1-126, 1-144(c, e), 1-146(a), 1-147(c)(1, 2), 22-101 et seq., 23-101 et seq., 24-104 et seq., 29-801; U.S. Const. Art. 1, § 8, cl. 17. *District of Columbia v. Washington Home Ownership Council, Inc.*, 415 A.2d 1349, 1980 D.C. App. LEXIS 305 (1980).

§ 1-204.13. Investigations by the Council.

(a) The Council, or any committee or person authorized by it, shall have power to investigate any matter relating to the affairs of the District, and for that purpose may require the attendance and testimony of witnesses and the production of books, papers, and other evidence. For such purpose any member of the Council (if the Council is conducting the inquiry) or any member of the committee may issue subpoenas, and administer oaths upon resolution adopted by the Council or committee, as appropriate.

(b) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Council by resolution may refer the matter to the Superior Court of the District of Columbia, which may by order require such person to appear and give or produce testimony or books, papers, or other evidence, bearing upon the matter under investigation. Any failure to obey such order may be punished by such Court as a contempt thereof as in the case of failure to obey a subpoena issued, or to testify, in a case pending before such Court.

(Dec. 24, 1973, 87 Stat. 789, Pub. L. 93-198, title IV, § 413.)

Cross references. — Council investigations, penalty for obstructing, see § 1-301.43.

Oaths, administration by Mayor, chairman of Council, and members of Council, see § 1-301.22.

Procurement, debarment or suspension of businesses, see § 2-308.04.

Prior Codifications. — 1981 Ed., § 1-234. 1973 Ed., § 1-148.

Part B

THE MAYOR.

§ 1-204.21. Election, qualifications, vacancy, and compensation.

(a) There is established the Office of Mayor of the District of Columbia; and the Mayor shall be elected by the registered qualified electors of the District.

(b) The Mayor, established by subsection (a) of this section, shall be elected, on a partisan basis, for a term of 4 years beginning at noon on January 2nd of the year following his election.

(c)(1) No person shall hold the Office of Mayor unless he: (A) Is a qualified elector; (B) has resided and been domiciled in the District for 1 year immediately preceding the day on which the general or special election for Mayor is to be held; and (C) is not engaged in any employment (whether as an employee or as a self-employed individual) and holds no public office or position (other than his employment in and position as Mayor), for which he is compensated in an amount in excess of his actual expenses in connection therewith, except that nothing in this clause shall be construed as prohibiting such person, while holding the Office of Mayor, from serving as a delegate or alternate delegate to a convention of a political party nominating candidates for President and Vice President of the United States, or from holding an appointment in a reserve component of an armed force of the United States other than a member serving on active duty under a call for more than 30 days. The Mayor shall forfeit his office upon failure to maintain the qualifications required by this paragraph.

(2) To fill a vacancy in the Office of Mayor, the Board of Elections shall hold a special election in the District on the Tuesday occurring at least 70 days and not more than 174 days after the date on which such vacancy occurs which the Board of Elections determines, based on a totality of the circumstances, taking into account, inter alia, cultural and religious holidays and the administrability of the election, will provide the opportunity for the greatest level of voter participation. The person elected Mayor to fill a vacancy in the Office of Mayor shall take office on the day on which the Board of Elections and Ethics certifies his election, and shall serve as Mayor only for the remainder of the term during which such vacancy occurred. When the Office of Mayor becomes vacant the Chairman shall become Acting Mayor and shall serve from the date such vacancy occurs until the date on which the Board of Elections and Ethics certifies the election of the new Mayor at which time he shall again become Chairman. While the Chairman is Acting Mayor, the Chairman shall receive the compensation regularly paid the Mayor, and shall receive no compensation as Chairman or member of the Council. While the Chairman is

Acting Mayor, the Council shall select one of the elected at-large members of the Council to serve as Chairman and one to serve as chairman pro tempore, until the return of the regularly elected Chairman.

(d) The Mayor shall receive compensation, payable in equal installments, at a rate equal to the maximum rate, as may be established from time to time, for level III of the Executive Schedule in § 5314 of Title 5 of the United States Code. Such rate of compensation may be increased or decreased by act of the Council. Such change in such compensation, upon enactment by the Council in accordance with the provisions of this chapter, shall apply with respect to the term of Mayor next beginning after the date of such change. In addition, the Mayor may receive an allowance, in such amount as the Council may from time to time establish, for official, reception, and representation expenses, which he shall certify in reasonable detail to the Council.

(Dec. 24, 1973, 87 Stat. 789, Pub. L. 93-198, title IV, § 421; Aug. 14, 1974, 88 Stat. 458, Pub. L. 93-376, title III, § 306(a); July 18, 2012, 126 Stat. 1133, Pub. L. 112-145, § 2(b).)

Cross references. — Elections, recall of elected officials, see § 1-1001.17.

Merit system, coverage and limitations, see § 1-602.02.

Office of Mayor, vacancies, see §§ 1-204.01 and 1-204.11.

Section references. — This section is referred to in §§ 1-203.03, 1-301.47, 1-204.114, 2-601, 38-1201.03, 39-202, 48-901.02, 47-802, and 47-1401.

Prior Codifications. — 1981 Ed., § 1-241. 1973 Ed., § 1-161.

Effect of amendments. — Pub. L. 112-145, in subsec. (c)(2), rewrote the first sentence which had read: "To fill a vacancy in the Office of Mayor, the Board of Elections and Ethics shall hold a special election in the District on the 1st Tuesday occurring more than 114 days after the date on which such vacancy occurs, unless the Board of Elections and Ethics determines that such vacancy could be more practicably filled in a special election held on the same day as the next general election to be held in the District occurring within 60 days of the date on which a special election would otherwise have been held under the provisions of this paragraph."

Temporary Amendment of Section. — Section 2(b) of D.C. Law 18-301, in subsec. (c)(2), substituted "more than seventy days" for "more than one hundred fourteen days".

Section 3 of D.C. Law 18-301 provided that this act shall apply upon enactment by Congress.

Section 5(b) of D.C. Law 18-301 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see §§ 2(b), 3 of

Special Election Reform Charter Emergency Amendment Act of 2010 (D.C. Act 18-591, November 3, 2010, 57 DCR 10470).

For temporary (90 day) addition of section, see § 3 of Special Election Reform Charter Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-7, February 11, 2011, 58 DCR 1416).

For temporary (90 day) amendment of section, see § 2(b) of Special Election Reform Charter Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-7, February 11, 2011, 58 DCR 1416).

For temporary (90 day) amendment of section, see § 301(c) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

For temporary (90 day) addition of section, see § 602(b) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Effective date. — Section 601(j) of D.C. Law 19-124 provided: "(j) Title IV shall apply on its effective date as provided in section 303 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 784; D.C. Official Code § 1-203.03)."

Section 3 of Pub. L. 112-145 provided: "Sec. 3. Effective Date. The amendments made by section 2 shall apply with respect to vacancies occurring on or after the enactment of this Act."

Editor's notes. — Section 401(c) of D.C. Law 19-124 provided for the substitution of "to be held; (C) has not been convicted of a felony while holding the office; and (D) is" for "to be held; and (C) is".

CASE NOTES

ANALYSIS

Election Act.
Initiatives.
Right to candidacy.

Election Act.

Unconstitutional section of District of Columbia Election Act, which required resignation of person holding any of certain offices before filing of nominating petition for certain other offices if such office had term not coincident with office presently held was severable and could be struck down without voiding entire Act, where neither language of Act nor its legislative history suggested congressional intent that Election Act stand or fall as a whole and where election scheme established would work perfectly well without unconstitutional section. D.C. Code § 1-1115(b). *Barry v. District of Columbia Board of Elections & Ethics*, 448 F. Supp. 1249, 1978 U.S. Dist. LEXIS 18373 (1978), appeal dismissed by 580 F.2d 695, 188 U.S. App. D.C. 432, 1978 U.S. App. LEXIS 10640 (1978).

District of Columbia Election Act section which required that person holding any of certain offices resign before filing nominating petition for any of certain other offices if such other office had term beginning prior to end of term of office presently held created distinction between those holding coincident and noncoincident terms which was not justified by any rational governmental purpose and thus violated equal protection guaranty of Fifth Amendment. U.S. Const. Amend. 5; D.C. Code § 1-1115(b). *Barry v. District of Columbia Board of Elections & Ethics*, 448 F. Supp. 1249, 1978 U.S. Dist. LEXIS 18373 (1978), appeal dismissed by 580 F.2d 695, 188 U.S. App. D.C. 432, 1978 U.S. App. LEXIS 10640 (1978).

Section of District of Columbia Election Act providing that no person holding any of certain offices shall be eligible to run as candidate for any other of such offices in any primary or general election unless term of office which he holds expires on or prior to date on which he would be eligible to take office if elected and which required resignation before filing nominating petition for different office having term not coincident with office presently held was unconstitutional, in view of fact that statute was not shown to promote any cognizable objective which could justify restriction of First Amendment rights. U.S. Const. Amend. 1; D.C.

Code § 1-1115(b). *Barry v. District of Columbia Board of Elections & Ethics*, 448 F. Supp. 1249, 1978 U.S. Dist. LEXIS 18373 (1978), appeal dismissed by 580 F.2d 695, 188 U.S. App. D.C. 432, 1978 U.S. App. LEXIS 10640 (1978).

Section of District of Columbia Election Act providing that person holding one of several specified offices is not eligible to run as candidate for any of those offices unless term of office held expires prior to date person would take office if elected to new office did not restrict any constitutionally fundamental right of free speech, and thus impairment of officers' rights did not warrant strict constitutional scrutiny. U.S. Const. Amend. 1; D.C. Code § 1-1115(b). *Barry v. District of Columbia Board of Elections & Ethics*, 448 F. Supp. 1249, 1978 U.S. Dist. LEXIS 18373 (1978), appeal dismissed by 580 F.2d 695, 188 U.S. App. D.C. 432, 1978 U.S. App. LEXIS 10640 (1978).

Initiatives.

District of Columbia's adoption of initiative right did not violate provisions of District's Charter establishing District Council and office of mayor and method of election therefor. D.C. Code 1981, §§ 1-205(a), 1-221(a), 1-241(a). *Stevenson v. District of Columbia Bd. of Elections & Ethics*, 683 A.2d 1371, 1996 D.C. App. LEXIS 201 (1996).

Right to candidacy.

District of Columbia mayoral candidate's right to candidacy was important but not constitutionally fundamental right. U.S. Const. Amend. 1. *Barry v. District of Columbia Board of Elections & Ethics*, 448 F. Supp. 1249, 1978 U.S. Dist. LEXIS 18373 (1978), appeal dismissed by 580 F.2d 695, 188 U.S. App. D.C. 432, 1978 U.S. App. LEXIS 10640 (1978).

Fact that District of Columbia offices were only recently made elective by Congress in no way diminished importance of rights associated with seeking those offices; although Congress was not constitutionally required to grant self-government to District of Columbia, once Congress did so, it could not impose unconstitutional conditions or unnecessarily burden First Amendment rights inherent in democratic self-government. U.S. Const. Amend. 1. *Barry v. District of Columbia Board of Elections & Ethics*, 448 F. Supp. 1249, 1978 U.S. Dist. LEXIS 18373 (1978), appeal dismissed by 580 F.2d 695, 188 U.S. App. D.C. 432, 1978 U.S. App. LEXIS 10640 (1978).

§ 1-204.22. Powers and duties.

The executive power of the District shall be vested in the Mayor who shall be the chief executive officer of the District government. In addition, except as

otherwise provided in this chapter, all functions granted to or vested in the Commissioner of the District of Columbia, as established under Reorganization Plan No. 3 of 1967, shall be carried out by the Mayor in accordance with this chapter. The Mayor shall be responsible for the proper execution of all laws relating to the District, and for the proper administration of the affairs of the District coming under his jurisdiction or control, including but not limited to the following powers, duties, and functions:

(1) The Mayor may designate the officer or officers of the executive department of the District who may, during periods of disability or absence from the District of the Mayor, execute and perform the powers and duties of the Mayor.

(2) The Mayor shall administer all laws relating to the appointment, promotion, discipline, separation, and other conditions of employment of personnel in the Office of the Mayor, personnel in executive departments of the District, and members of boards, commissions, and other agencies, who, under laws in effect on the date immediately preceding January 2, 1975, were subject to appointment and removal by the Commissioner of the District of Columbia. All actions affecting such personnel and such members shall, until such time as legislation is enacted by the Council superseding such laws and establishing a permanent District government merit system, pursuant to paragraph (3) of this section, continue to be subject to the provisions of acts of Congress relating to the appointment, promotion, discipline, separation, and other conditions of employment applicable to officers and employees of the District government, to § 1-207.13, and where applicable, to the provisions of the joint agreement between the Commissioners and the Civil Service Commission authorized by Executive Order No. 5491 of November 18, 1930, relating to the appointment of District personnel. He shall appoint or assign persons to positions formerly occupied, ex officio, by the Commissioner of the District of Columbia or by the Assistant to the Commissioner and shall have power to remove such persons from such positions. The officers and employees of each agency with respect to which legislative power is delegated by this chapter and which immediately prior to January 2, 1975, was not subject to the administrative control of the Commissioner of the District, shall continue to be appointed and removed in accordance with applicable laws until such time as such laws may be superseded by legislation passed by the Council establishing a permanent District government merit system pursuant to paragraph (3) of this section.

(3) The Mayor shall administer the personnel functions of the District covering employees of all District departments, boards, commissions, offices and agencies, except as otherwise provided by this chapter. Personnel legislation enacted by Congress prior to or after January 2, 1975, including, without limitation, legislation relating to appointments, promotions, discipline, separations, pay, unemployment compensation, health, disability and death benefits, leave, retirement, insurance, and veterans' preference applicable to employees of the District government as set forth in § 1-207.14(c), shall continue to be applicable until such time as the Council shall, pursuant to this section, provide for coverage under a District government merit system. The District government merit system shall be established by act of the Council.

The system shall apply with respect to the compensation of employees of the District government during fiscal year 2006 and each succeeding fiscal year, except that the system may provide for continued participation in all or part of the Federal Civil Service System and shall provide for persons employed by the District government immediately preceding the effective date of such system personnel benefits, including but not limited to pay, tenure, leave, residence, retirement, health and life insurance, and employee disability and death benefits, all at least equal to those provided by legislation enacted by Congress, or regulation adopted pursuant thereto, and applicable to such officers and employees immediately prior to the effective date of the system established pursuant to this chapter, except that nothing in this chapter shall prohibit the District from separating an officer or employee subject to such system in the implementation of a financial plan and budget for the District government approved under subpart B of subchapter VII of Chapter 3 of Title 47, and except that nothing in this section shall prohibit the District from paying an employee overtime pay in accordance with § 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. § 207). The District government merit system shall take effect not earlier than 1 year nor later than 5 years after January 2, 1975.

(4) The Mayor shall, through the heads of administrative boards, offices, and agencies, supervise and direct the activities of such boards, offices, and agencies.

(5) The Mayor may submit drafts of acts to the Council.

(6) The Mayor may delegate any of his functions (other than the function of approving or disapproving acts passed by the Council or the function of approving contracts between the District and the federal government under § 1-207.31) to any officer, employee, or agency of the executive office of the Mayor, or to any director of an executive department who may, with the approval of the Mayor, make a further delegation of all or a part of such functions to subordinates under his jurisdiction. Nothing in the previous sentence may be construed to permit the Mayor to delegate any functions assigned to the Chief Financial Officer of the District of Columbia under subchapter I-A of Chapter 3 of Title 47, without regard to whether such functions are assigned to the Chief Financial Officer under such section during a control year (as defined in § 47-393(4)) or during any other year.

(7) The Mayor shall appoint a City Administrator, who shall serve at the pleasure of the Mayor. The City Administrator shall be the chief administrative officer of the Mayor, and he shall assist the Mayor in carrying out his functions under this chapter, and shall perform such other duties as may be assigned to him by the Mayor. The City Administrator shall be paid at a rate established by the Mayor.

(8) The Mayor may propose to the executive or legislative branch of the United States government legislation or other action dealing with any subject, whether or not falling within the authority of the District government, as defined in this chapter.

(9) The Mayor, as custodian thereof, shall use and authenticate the corporate seal of the District in accordance with law.

(10) The Mayor shall have the right, under rules to be adopted by the Council, to be heard by the Council or any of its committees.

(11) The Mayor is authorized to issue and enforce administrative orders, not inconsistent with this or any other Act of the Congress or any act of the Council, as are necessary to carry out his functions and duties.

(12) The Mayor may reorganize the offices, agencies, and other entities within the executive branch of the government of the District by submitting to the Council a detailed plan of such reorganization. Such a reorganization plan shall be valid only if the Council does not adopt, within 60 days (excluding Saturdays, Sundays, and holidays) after such reorganization plan is submitted to it by the Mayor, a resolution disapproving such reorganization.

(Dec. 24, 1973, 87 Stat. 790, Pub. L. 93-198, title IV, § 422; Aug. 17, 1991, 105 Stat. 540, Pub. L. 102-106, § 3; Oct. 29, 1993, 107 Stat. 1350, Pub. L. 103-127, title I, § 140; Apr. 17, 1995, 109 Stat. 116, 147, Pub. L. 104-8, §§ 202(h), 302(b); Nov. 29, 1999, 113 Stat. 1515, Pub. L. 106-113, § 119(a); Oct. 16, 2006, 120 Stat. 2039, Pub. L. 109-356, § 303(a).)

Cross references. — Affirmative action, goals, see § 1-521.01.

Business and economic development, “authorized delegate” defined, see § 2-1219.01.

Commissioner of insurance and securities, appointment by Mayor, see § 31-104.

Mayor, financial duties, see § 1-204.48.

Mayor, use of official mail, see § 2-701 et seq.

Merit system, findings of Council, see § 1-601.01.

Merit system, personnel authority pilot programs, incentive awards, authority of Mayor to implement, see § 1-619.03.

Merit system, personnel authority pilot programs, see § 1-611.21.

National capital housing authority, creation, see § 1-202.02.

Office of youth advocacy, establishment, see § 2-1504.

Procurement, limitation of contracting authority, see § 2-301.05.

Saint Elizabeth’s Hospital and District of Columbia mental health services, comprehensive mental health system, implementation plan, see § 44-903.

Transitional council and offices, delegation and transfer of functions, see § 1-207.12.

United States Civil Service Commission, assistance in further development of merit system, see § 1-207.34.

Youth services, transfer of positions and funds to department of manpower, see § 2-1506.

Section references. — This section is referred to in §§ 1-315.03 and 42-281.

Prior Codifications. — 1981 Ed., § 1-242. 1973 Ed., § 1-162.

Effect of amendments. — Public Law 106-113, in par. (7), deleted “not to exceed level IV of the Executive Schedule established under § 5315 of Title 5 of the United States Code” from the end of the third sentence.

Pub. L. 109-356, in the fourth sentence of par. (3) substituted “The system shall apply with respect to the compensation of employees of the District government during fiscal year 2006 and each succeeding fiscal year, except that the system may provide” for “The system may provide”.

Report delineating actions taken to implement Multiyear Budget Spending Reduction and Support Act: — Section 811 of D.C. Law 10-253 provided that within 120 days of the effective date of the Multiyear Budget Spending Reduction and Support Act of 1995, the Mayor shall submit to the Council a report delineating the actions taken by the executive to effect the directives of the Council in the Multiyear Budget Spending Reduction and Support Act of 1995, including:

(1) Negotiations with representatives of collective bargaining units to reduce employee compensation;

(2) Actions to restructure existing long-term city debt;

(3) Actions to apportion the spending reductions anticipated by the directives of this chapter to the executive for unallocated reductions; and

(4) A list of any position that is backfilled including description, title, and salary of this position.

Section 1301(b) of D.C. Law 10-253 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Multiyear Budget Spending Reduction and Support Act of 1995, whichever occurs first.

Temporary Addition of Section. — Section 2 to 4 of D.C. Law 18-300 added sections to read as follows:

“Sec. 2. Purpose.

“This act authorizes the Mayor to take appropriate action to assure continuity in the execution of the laws and in the conduct of the

legislative and executive affairs of the District of Columbia government. The purposes of this act are to provide for the orderly transfer of the:

"(1) Executive duties and responsibilities of the Executive Office of the Mayor upon the expiration of the term of office of a Mayor and the assumption of those duties and responsibilities by a new Mayor; and

"(2) Legislative duties and responsibilities of the Chairman of the Council upon the expiration of the term of office of a Chairman and the assumption of those duties and responsibilities by a new Chairman.

"Sec. 3. Transition activities.

"The Mayor, in the discharge of his duties pursuant to section 422 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 790; D.C. Official Code § 1-204.22), may make available to the Mayor-elect and the Chairman-elect from November 3, 2010, through the 15th day following the date of the inauguration of the Mayor-elect and the swearing-in of the Chairman-elect:

"(1) Office space, furniture, furnishings, computers, office machines, and supplies at whatever place or places within the District the Mayor designates at no cost to the Mayor-elect, the Chairman-elect, or their transition staffs;

"(2) The services of District employees;

"(3) The use of District motor vehicles; provided, that the vehicles are driven by District government employees;

"(4) Printing, binding, and duplicating services;

"(5) Postage and mailing services consistent with the Official Correspondence Regulations, effective April 7, 1977 (D.C. Law 1-118; D.C. Official Code § 2-701 et seq.); and

"(6) Communication equipment and services.

"Sec. 4. Definitions.

"For the purposes of this act, the term:

"(1) 'Chairman-elect' means the person who is certified as the successful candidate for the office of Chairman of the Council by the District of Columbia Board of Elections and Ethics ("Board of Elections and Ethics") following the general election held to determine the Chairman, or for the period of time between the general election and certification, the person announced and published by the Board of Elections and Ethics as the unofficial winner of the general election for Chairman.

"(2) 'Mayor-elect' means the person who is certified as the successful candidate for the office of Mayor by the Board of Elections and Ethics following the general election held to determine the Mayor, or for the period of time between the general election and certification, the person announced and published by the Board of Elections and Ethics as the unofficial winner of the general election for Mayor."

Section 6(b) of D.C. Law 18-300 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary provision, on an emergency basis, to promote the orderly transfer of executive duties and responsibilities upon expiration of the term of office of the Mayor and the assumption of duties and responsibilities of the new Mayor, see §§ 2-6 of the Mayoral Transition Emergency Act of 1998 (D.C. Act 12-541, 46 DCR 303).

For temporary (90 day) additions, see §§ 2 to 4 of Mayor and Chairman of the Council Transition Emergency Act of 2010 (D.C. Act 18-590, November 3, 2010, 57 DCR 10467).

References in text. — "§ 1-207.31", referred to in paragraph (6) of this section, was repealed by § 5(b) of the Act of September 13, 1982, Pub. L. 97-258. Present provisions similar to repealed § 1-207.31 are codified as § 1-207.31 and 31 U.S.C. § 1537.

Delegation of Authority. — Delegation of authority—city administrator, see Mayor's Order 88-16, January 30, 1988.

Delegation of authority—state legalization impact assistance grants, see Mayor's Order 88-169, July 14, 1988.

Amendment of Mayor's Order 90-178, Delegation of Contracting Authority: See Mayor's Order 95-45, March 23, 1995.

Delegation of authority under D.C. Act 11-404, the "General Obligation Bond Act of 1996", see Mayor's Order 96-146, October 7,

Mayor's Orders. — Office of the Secretary established: See Mayor's Orders 84-77, April 16, 1984; 84-112, July 11, 1984.

Office of Ombudsman established: See Mayor's Order 86-140, August 22, 1986.

Amendment of Mayor's Order 83-17, January 3, 1983.

Establishment of the Office of Operations: See Mayor's Order 88-11, January 30, 1988.

Establishment of the Office of Public Advocate, see Mayor's Order 99-55, March 5, 1999 (46 DCR 2832).

Amendment of Mayor's Order 96-176, dated 12-11-96, Establishing the Mayor's Office of Health Policy and the Mayor's Health Policy Council, see Mayor's Order 99-75, May 11, 1999 (46 DCR 5428).

Establishment of the D.C. Workforce Investment Council and Abolishment of the D.C. Workforce Investment Board (formerly known as the D.C. Private Industry Council and the State Job Training Coordinating Council), see Mayor's Order 99-85, June 2, 1999 (46 DCR 5442).

Establishment—Office of Partnership and Resource Development, see Mayor's Order 2001-132, September 10, 2001 (48 DCR 8993).

Establishment of Office of Policy Research and Development, see Mayor's Order 2001-185, December 19, 2001 (48 DCR 11735).

Establishment of Office of Legislative Support, see Mayor's Order 2001-186, December 19, 2001 (48 DCR 11738).

Establishment of Office of Community Outreach, see Mayor's Order 2001-187, December 19, 2001 (48 DCR 11741).

Establishment of Office of Boards and Commissions, see Mayor's Order 2001-189, December 19, 2001 (48 DCR 11744).

Editor's notes. — Report delineating actions taken to implement Multiyear Budget Spending Reduction and Support Act: Section 811 of the Multiyear Budget Spending and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197) provided that within 120 days of the effective date of the act, the Mayor shall submit to the Council a report delineating the actions taken by the executive to effect the directives of the Council in the act.

Section 156 of Public Law 106-522 provided:

“(a) Notwithstanding the provisions of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (D.C. Law 2-139; D.C. Code 1-601.01 et seq.), or any other District of Columbia law, statute, regulation, the provisions of the District of Columbia Personnel Manual, or the provisions of any collec-

tive bargaining agreement, employees of the District of Columbia government will only receive compensation for overtime work in excess of 40 hours per week (or other applicable tour of duty) of work actually performed, in accordance with the provisions of the Fair Labor Standards Act, 29 U.S.C. Sec. 201 et seq.

“(b) Subsection (a) of this section shall be effective December 27, 1996. The Resolution and Order of the District of Columbia Financial Responsibility and Management Assistance Authority, dated December 27, 1996, is hereby ratified and approved and shall be given full force and effect.”

Compensation for City Administrator: Section 119(a) of Pub. L. 104-194, 110 Stat. 2366, the District of Columbia Appropriations Act, 1997, provided that notwithstanding § 1-242(7) [§ 1-204.22(7), 2001 Ed.], the City Administrator shall be paid, during any fiscal year, a salary at a rate established by the Mayor, not to exceed the rate established for level IV of the Executive Schedule under 5 U.S.C. § 5315.

CASE NOTES

ANALYSIS

At least equal to.
Comprehensive Merit Personnel Act.
Construction with other laws.
Contracts.
Executive or administrative functions.
Initiatives.
Personnel actions, generally.
Reductions-in-force.
Review.

At least equal to.

The “at least equal to” language of the Self-Government Act did not require that District of Columbia develop a compensation system for its employees guaranteeing benefits equal to those enjoyed under the previous applicable federal compensation system and, hence, did not preclude the city council from amending the Comprehensive Merit Personnel Act to permit the mayor to take into consideration budgetary constraints due to limited appropriations or revenues in adopting a 5% employee pay increase which was less than 9.1% pay increase granted federal employees. D.C. Code 1981, §§ 1-162(3), 1-242(3), 1-601.1 et seq., 1-612.4(a), 1-612.5(d, e), 1-612.11(d, i). American Federation of Government Employees v. Barry, 459 A.2d 1045, 1983 D.C. App. LEXIS 343 (1983).

A pay comparability process or mechanism is not one of the personnel “benefits” that, under the Comprehensive Merit Personnel Act, must remain at least equal to those provided by

previously applicable federal personnel legislation. D.C. Code 1981, §§ 1-162(3), 1-242(3), 1-601.1 et seq., 1-612.4(a), 1-612.5(d, e), 1-612.11(d, i). American Federation of Government Employees v. Barry, 459 A.2d 1045, 1983 D.C. App. LEXIS 343 (1983).

Employees transferred by the Self-Government Act from employment with the federal government to employment with the District Government are not entitled to the 9.1% pay increase granted federal employees instead of the 5% pay increase granted district employees pursuant to the Comprehensive Merit Personnel Act. D.C. Code 1981, §§ 1-612(3), 1-242(3), 1-601.1 et seq., 1-612.4(a), 1-612.5(d, e), 1-612.11(d, i). American Federation of Government Employees v. Barry, 459 A.2d 1045, 1983 D.C. App. LEXIS 343 (1983).

Comprehensive Merit Personnel Act.

Authority was vested in Court of Appeals to review the adoption by the city council of two pieces of emergency legislation amending the Comprehensive Merit Personnel Act to permit the mayor to take into consideration budgetary constraints due to limited appropriations or revenues in authorizing a 5% pay increase for employees in the career and excepted services. D.C. Code 1981, §§ 1-162(3), 1-242(3), 1-601.1 et seq., 1-612.4(a), 1-612.5(d, e), 1-612.11(d, i); U.S. Const. Art. 1, § 8, cl. 1. American Federation of Government Employees v. Barry, 459 A.2d 1045, 1983 D.C. App. LEXIS 343 (1983).

Amendment of the Comprehensive Merit Personnel Act to permit the mayor to take into

consideration budgetary constraints due to limited appropriations or revenues in adopting a 5% pay increase for employees in the career and excepted services neither abused nor exceeded counsel's emergency legislative authority and was justified by perceived congressional reluctance to appropriate funds sufficient to meet greater pay raises. D.C. Code 1981, §§ 1-162(3), 1-242(3), 1-601.1 et seq., 1-612.4(a), 1-612.5(d, e), 1-612.11(d, i). *American Federation of Government Employees v. Barry*, 459 A.2d 1045, 1983 D.C. App. LEXIS 343 (1983).

Construction with other laws.

Read together, the Home Rule Act and Comprehensive Merit Personnel Act (CMPA) reflect congressional and District of Columbia policies that the District's personnel system is to be autonomous and separate from the federal system and that employees who were hired before 1980 could be given only those concrete entitlements or personnel benefits which were available, and to which they were entitled, before 1980. D.C. Code 1981, §§ 1-201 et seq., 1-601 et seq. *District of Columbia v. Brown*, 739 A.2d 832, 1999 D.C. App. LEXIS 255 (1999).

Nothing in the Home Rule Act nor Comprehensive Merit Personnel Act (CMPA) mandates the continuing applicability of future federal benefits provided by subsequent amendments to District of Columbia employees. D.C. Code 1981, §§ 1-201 et seq., 1-601 et seq. *District of Columbia v. Brown*, 739 A.2d 832, 1999 D.C. App. LEXIS 255 (1999).

Contracts.

Procurement Practices Act supersedes any authority Mayor otherwise might have to appeal Contract Appeals Board's (CAB) bid protest decision. D.C. Code 1981, §§ 1-227, 1-242, 1-361, 1-1181.1 et seq. *Francis v. Recycling Solutions*, 695 A.2d 63, 1997 D.C. App. LEXIS 138 (1997).

Executive or administrative functions.

Since system of government vesting executive/administrative, legislative and judicial functions in separate entities has been established in District of Columbia, nonlegislative matters cannot properly be submitted for initiative without violating sanctity of that division of responsibility, and thus power of electorate to propose laws through initiative is coextensive with power of legislative branch of government to pass legislative acts, ordinances and resolutions, and to make policy decisions, and does not extend to executive/administrative functions. D.C. Code 1980 Supp. §§ 1-181 to 1-195, 181(a). *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 871, 1980 D.C. App. LEXIS 360 (1980).

Initiatives.

Proposed initiative, which sought to bar construction and operation of convention center,

and which represented effort through both substantive and fiscal means to reverse legislative policy determination that District of Columbia should build and operate convention center, proposed a "law" within meaning of District of Columbia charter amendments relating to initiative proposals. D.C. Code 1980 Supp. § 1-181(a). *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 871, 1980 D.C. App. LEXIS 360 (1980).

Where initial plan to build convention center, to finance it in certain manner and to construct it on specific site had previously been approved, where budget request for funds had been made and funds duly appropriated, and where all that remained was for mayor to continue to provide monies from appropriated funds, initiative which would prohibit mayor and District of Columbia Council from providing any further public funds or incurring any debt for completion of convention center was primarily concerned with administrative and executive functions of mayor, and did not present primarily a legislative matter, and thus proposed initiative concerned improper subject for initiative. D.C. Code 1980 Supp. §§ 1-181 to 1-187, 1-181(a); D.C. Code 1978 Supp. §§ 1-162, 47-221 to 47-228. *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 871, 1980 D.C. App. LEXIS 360 (1980).

Personnel actions, generally.

Comprehensive Merit Personnel Act (CMPA) was intended to provide district employees with their exclusive remedies for claims arising out of employer conduct in handling personnel ratings, employee grievances and adverse actions, and thus precluded litigation of former employee's emotional distress and defamation claims in the Superior Court in the first instance. D.C. Code 1981, §§ 1-213(c), 1-242(3), 1-615.1 to 1-615.5, 1-617.1 to 1-617.3, 1-637.1; 5 U.S.C. §§ 1101 et seq., 8101-8193. *District of Columbia v. Thompson*, 593 A.2d 621, 1991 D.C. App. LEXIS 172 (1991), writ of certiorari denied by 502 U.S. 942, 112 S. Ct. 380, 116 L. Ed. 2d 331, 1991 U.S. LEXIS 6258, 60 U.S.L.W. 3342 (1991).

Comprehensive Merit Personnel Act (CMPA) provisions that govern performance ratings, adverse actions and grievances do not provide they are exclusive and preclude common-law claims. D.C. Code 1981, §§ 1-213(c), 1-242(3), 1-615.1 to 1-615.5, 1-617.1 to 1-617.3, 1-637.1. *District of Columbia v. Thompson*, 593 A.2d 621, 1991 D.C. App. LEXIS 172 (1991), writ of certiorari denied by 502 U.S. 942, 112 S. Ct. 380, 116 L. Ed. 2d 331, 1991 U.S. LEXIS 6258, 60 U.S.L.W. 3342 (1991).

Entitlement to attorney fees, available under former federal civil service scheme, survived for

District of Columbia employee who successfully litigated personnel action and who was hired before District superseded those portions of federal scheme in Comprehensive Merit Personnel Act. D.C. Code 1981, §§ 1-201 et seq., 1-601.1 et seq. *District of Columbia v. Hunt*, 520 A.2d 300, 1987 D.C. App. LEXIS 275 (1987).

Reductions-in-force.

Emergency rules establishing new reduction-in-force (RIF) procedures for District of Columbia teachers did not violate Home Rule Act. D.C. Code 1981, § 1-242(3). *Washington Teachers' Union Local No. 6 v. Board of Educ.*, 109 F.3d 774, 1997 U.S. App. LEXIS 5306 (C.A.D.C. 1997).

Review.

Because District of Columbia Comprehensive Merit Personnel Act (CMPA) was administered by the Office of Employee Appeals, rather than by university, Court of Appeals accorded little

or no deference to university's interpretation of the CMPA; on the other hand, Court gave considerable deference to university's interpretation of its own regulations governing reductions in force (RIF). *Harrison v. Board of Trustees of the Univ. of the District of Columbia*, 758 A.2d 19, 2000 D.C. App. LEXIS 194 (2000).

In reviewing the adoption by the city council of two pieces of emergency legislation amending the Comprehensive Merit Personnel Act, the Court of Appeals was to give deference to the counsel's definition and determination of "emergency circumstances" and was to seek only to assure itself that the act was facially valid, that is, consistent with the legislative authority of the council in partnership with Congress. D.C. Code 1981, §§ 1-162(3), 1-242(3), 1-601.1 et seq., 1-612.4(a), 1-612.5(d, e), 1-612.11(d, i); U.S. Const. Art. 1, § 8, cl. 1. *American Federation of Government Employees v. Barry*, 459 A.2d 1045, 1983 D.C. App. LEXIS 343 (1983).

§ 1-204.23. Municipal planning.

(a) The Mayor shall be the central planning agency for the District. He shall be responsible for the coordination of planning activities of the municipal government and the preparation and implementation of the District's elements of the comprehensive plan for the National Capital which may include land use elements, urban renewal and redevelopment elements, a multi-year program of municipal public works for the District, and physical, social, economic, transportation, and population elements. The Mayor's planning responsibility shall not extend to federal and international projects and developments in the District, as determined by the National Capital Planning Commission, or to the United States Capitol buildings and grounds as defined in §§ 10-503.11 and 10-503.26, or to any extension thereof or addition thereto, or to buildings and grounds under the care of the Architect of the Capitol. In carrying out his responsibilities under this section, the Mayor shall establish procedures for citizen involvement in the planning process and for appropriate meaningful consultation with any state or local government or planning agency in the National Capital region affected by any aspect of a proposed District element of the comprehensive plan (including amendments thereto) affecting or relating to the District.

(b) The Mayor shall submit the District's elements and amendments thereto to the Council for revision or modification, and adoption by act, following public hearings. Following adoption and prior to implementation, the Council shall submit such elements and amendments thereto to the National Capital Planning Commission for review and comment with regard to the impact of such elements or amendments on the interests and functions of the federal establishment, as determined by the Commission.

(c) Such elements and amendments thereto shall be subject to and limited by determinations with respect to the interests and functions of the federal establishment as determined in the manner provided by act of Congress.

(Dec. 24, 1973, 87 Stat. 792, Pub. L. 93-198, title IV, § 423.)

Cross references. — Budget and financial management, multiyear capital improvements plan, see § 1-204.44.

National capital revitalization corporation, revitalization plan, see § 2-1219.12.

Section references. — This section is referred to in §§ 1-306.01 and 2-1219.01.

Prior Codifications. — 1981 Ed., § 1-244. 1973 Ed., § 1-163.

Mayor's Orders. — Establishment of District of Columbia Advisory Council on Memorials: See Mayor's Order 89-201, September 8, 1989.

Editor's notes. — Comprehensive plan goals and policies: Act of March 3, 1979, D.C. Law 2-134, established the goals and policies of the District of Columbia as the first District element of the comprehensive plan for the National Capital.

Section 4 of the District of Columbia Comprehensive Plan Act of 1984 (D.C. Law 5-76) repealed the District of Columbia Comprehensive

Plan Goals and Policies Act of 1978 (D.C. Law 2-134).

District of Columbia Comprehensive Plan of 1984: Section 2 of D.C. Law 8-129, as amended by § 201 of D.C. Law 8-132, amended Titles I through VIII, X and XI, and added Title XII to the District of Columbia Comprehensive Plan of 1984, adopted by D.C. Law 5-76. D.C. Law 8-129 was reprinted in its entirety in 37 DCR 55. Amended Titles I through VII, X, XI, and new Title XII will be codified at Title 10 of the District of Columbia Municipal Regulations. D.C. Law 8-132 is found at 37 DCR 2213.

Review of District elements by National Capital Planning Commission: Section 6(b) of D.C. Law 5-187, and § 4(b) of D.C. Law 8-129, provided that no District element of the Comprehensive Plan for the National Capital shall take effect until it has been reviewed by the National Capital Planning Commission as provided in subsection (a) of § 2-1002 and this section.

CASE NOTES

ANALYSIS

Impingement on executive functions.

Initiatives, generally.

Laws appropriating funds.

Zoning and planning, generally.

Impingement on executive functions.

Proposed initiative, which sought to bar construction and operation of convention center, and which represented effort through both substantive and fiscal means to reverse legislative policy determination that District of Columbia should build and operate convention center, proposed a "law" within meaning of District of Columbia charter amendments relating to initiative proposals. D.C. Code 1980 Supp. § 1-181(a). Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

District of Columbia Council, pursuant to its powers of ordinary legislation, can remove substantive authorization for funded project but, to extent Congress has appropriated funds for project, council can halt further expenditure only through more elaborate requirements of budget process, even though project has been formally deauthorized, and thus substantial deauthorization by council can halt funded project during current fiscal year only if implemented by supplemental budget request act followed by congressional supplemental appropriations act. (Per Ferren, J., with two Judges

concurring and two Judges concurring in result.) Budget and Accounting Act, 1921, § 201(a)(b), 31 U.S.C. § 11(b); D.C. Code 1978 Supp. §§ 47-221(c), 47-224. Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

Proposed District of Columbia initiative, substantive effect of which would be to amend general capital construction statute removing authorization for convention center and also to repeal law providing for its operation did not address merely administrative concerns or impermissibly interfere with execution of existing law and thus was "legislative" in both its substantive and final aspects and did not violate rule that initiative cannot extend to administrative matters. (Per Ferren, J., with two Judges concurring and two Judges concurring in result.) D.C. Code 1973, § 9-220(a); D.C. Code 1980 Supp. § 1-181(b). Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

Initiatives, generally.

Exception to District of Columbia initiative right for "laws appropriating funds" constitutes operative, substantive limitation on initiative right. (Per Ferren, J., with two Judges concurring and two Judges concurring in result.) D.C. Code 1980 Supp. §§ 1-181(a), 1-1116(k)(7). Convention Center Referendum Committee v.

District of Columbia Bd. of Elections & Ethics, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

Laws appropriating funds.

Exception to District of Columbia initiative right for "laws appropriating funds" does not preclude initiatives that establish substantive authorization for new project, that repeal existing substantive authorization for program without rescinding its current funding, or that prohibit future budget requests. (Per Ferren, J., with two Judges concurring and two Judges concurring in result.) D.C. Code 1980 Supp. §§ 1-181(a), 1-1116(k)(7). *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

Proposed initiative, which sought to bar construction and operation of District of Columbia convention center by repealing underlying substantive authorization for construction and operation of center and by barring further expenditure of appropriated funds and preventing future appropriation requests, would interdict expenditure of currently appropriated funds and thus was barred by exception to initiative right for "laws appropriating funds" as reflected in amendment prohibiting initiatives that contravene existing budget request act. (Per Ferren, J., with two Judges concurring and two Judges concurring in result.) D.C. Code 1980 Supp. §§ 1-181(a), 1-1116(k)(7), (l). *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

Exception to District of Columbia initiative right for "laws appropriating funds" bars any initiative that would halt a project to the extent funds have been requested or appropriated, but leaves within scope of initiative right the power to stop project as of end of fiscal period for which funds have been requested or appropriated, and thus "laws appropriating funds" ex-

ception prevents electorate from using initiative to adopt budget request act or make some other affirmative effort to appropriate or to block expenditure of appropriated funds. (Per Ferren, J., with two Judges concurring and two Judges concurring in result.) D.C. Code 1980 Supp. §§ 1-181(a), 1-1116(k)(7). *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

Zoning and planning, generally.

Neither District of Columbia Self Government Act nor District of Columbia Comprehensive Plan Act of 1984 imposed moratorium on private real estate development permitted as a matter of right under applicable zoning regulations, even if regulations may have been inconsistent with District's comprehensive plan. D.C. Code 1981, §§ 1-201 et seq., 1-245 et seq. *Tenley & Cleveland Park Emergency Committee v. District of Columbia Bd. of Zoning Adjustment*, 550 A.2d 331, 1988 D.C. App. LEXIS 206 (1988), writ of certiorari denied by 489 U.S. 1082, 109 S. Ct. 1539, 103 L. Ed. 2d 843, 1989 U.S. LEXIS 1460, 57 U.S.L.W. 3620 (1989).

Zoning Commission is exclusive agency vested with responsibility for assuring that zoning regulations are not inconsistent with comprehensive plan. *Tenley & Cleveland Park Emergency Committee v. District of Columbia Bd. of Zoning Adjustment*, 550 A.2d 331, 1988 D.C. App. LEXIS 206 (1988), writ of certiorari denied by 489 U.S. 1082, 109 S. Ct. 1539, 103 L. Ed. 2d 843, 1989 U.S. LEXIS 1460, 57 U.S.L.W. 3620 (1989).

Board of Zoning Appeals and Zoning Administrator have no power to implement comprehensive plan. D.C. Code 1981, § 5-424(e). *Tenley & Cleveland Park Emergency Committee v. District of Columbia Bd. of Zoning Adjustment*, 550 A.2d 331, 1988 D.C. App. LEXIS 206 (1988), writ of certiorari denied by 489 U.S. 1082, 109 S. Ct. 1539, 103 L. Ed. 2d 843, 1989 U.S. LEXIS 1460, 57 U.S.L.W. 3620 (1989).

Part Bi

CHIEF FINANCIAL OFFICER.

§ 1-204.24a. In general.

(a) *Establishment.* — There is hereby established within the executive branch of the government of the District of Columbia an Office of the Chief Financial Officer of the District of Columbia (hereafter referred to as the "Office"), which shall be headed by the Chief Financial Officer of the District of Columbia (hereafter referred to as the "Chief Financial Officer").

(b) *Organizational analysis.* —

(1) *Office of Budget and Planning.* — The name of the Office of Budget and

Management, established by Commissioner's Order 69-96, issued March 7, 1969, is changed to the Office of Budget and Planning.

(2) *Office of Tax and Revenue.* — The name of the Department of Finance and Revenue, established by Commissioner's Order 69-96, issued March 7, 1969, is changed to the Office of Tax and Revenue.

(3) *Office of Finance and Treasury.* — The name of the Office of Treasurer, established by Mayor's Order 89-244, dated October 23, 1989, is changed to the Office of Finance and Treasury.

(4) *Office of Financial Operations and Systems.* — The Office of the Controller, established by Mayor's Order 89-243, dated October 23, 1989, and the Office of Financial Information Services, established by Mayor's Order 89-244, dated October 23, 1989, are consolidated into the Office of Financial Operations and Systems.

(c) *Transfers.* — Effective with the appointment of the first Chief Financial Officer under § 1-204.24b, the functions and personnel of the following offices are established as subordinate offices within the Office:

(1) The Office of Budget and Planning, headed by the Deputy Chief Financial Officer for the Office of Budget and Planning.

(2) The Office of Tax and Revenue, headed by the Deputy Chief Financial Officer for the Office of Tax and Revenue.

(3) The Office of Research and Analysis, headed by the Deputy Chief Financial Officer for the Office of Research and Analysis.

(4) The Office of Financial Operations and Systems, headed by the Deputy Chief Financial Officer for the Office of Financial Operations and Systems.

(5) The Office of Finance and Treasury, headed by the District of Columbia Treasurer.

(6) The Lottery and Charitable Games Control Board, established by Chapter 13 of Title 3.

(d) *Supervisor.* — The heads of the offices listed in subsection (c) of this section shall serve at the pleasure of the Chief Financial Officer.

(e) *Appointment and removal of office employees.* — The Chief Financial Officer shall appoint the heads of the subordinate offices designated in subsection (c) of this section, after consultation with the Mayor and the Council. The Chief Financial Officer may remove the heads of the offices designated in subsection (c) of this section, after consultation with the Mayor and the Council.

(f) *Annual budget submission.* — The Chief Financial Officer shall prepare and annually submit to the Mayor of the District of Columbia, for inclusion in the annual budget of the District of Columbia government for a fiscal year, annual estimates of the expenditures and appropriations necessary for the year for the operation of the Office and all other District of Columbia accounting, budget, and financial management personnel (including personnel of executive branch independent agencies) that report to the Office pursuant to this chapter.

(Dec. 24, 1973, 87 Stat. 774, Pub. L. 93-198, § 424(a), as added Apr. 17, 1995, 109 Stat. 142, Pub. L. 104-8, § 302(a); Oct. 16, 2006, 120 Stat. 2029, Pub. L. 109-356, § 201(a).)

Cross references. — Real property tax assignment, sale and transfers, see § 47-1303.04.

Section references. — This section is referred to in §§ 2-1217.01, 2-1219.01, 2-6201, and 47-2812.01.

Prior Codifications. — 1981 Ed., § 47-317.1.

Effect of amendments. — Pub. L. 109-356 rewrote the section.

Legislative history of Law 12-81. — Law 12-81, the “Technical Amendments Act of 1998,” was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the

Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

References in text. — Pursuant to the Office of the Chief Financial Officer’s “Notice of Public Interest” published in the April 18, 1997, issue of the District of Columbia Register (44 DCR 2345) the Office of Tax and Revenue assumed all of the duties and functions previously performed by the Department of Finance and Revenue, as set forth in Commissioner’s Order 69-96, dated March 7, 1969. This action was made effective January 22, 1997, nunc pro tunc.

§ 1-204.24b. Appointment of the Chief Financial Officer.

(a) *Appointment.* —

(1) *In general.* — The Chief Financial Officer shall be appointed by the Mayor with the advice and consent, by resolution, of the Council. Upon confirmation by the Council, the name of the Chief Financial Officer shall be submitted to the Committees on Appropriations of the House of Representatives and Senate, the Committee on Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate for a 30-day period of review and comment before the appointment takes effect.

(2) *Special rule for control years.* — During a control year, the Chief Financial Officer shall be appointed by the Mayor as follows:

(A) Prior to the appointment, the Authority may submit recommendations for the appointment to the Mayor.

(B) In consultation with the Authority and the Council, the Mayor shall nominate an individual for appointment and notify the Council of the nomination.

(C) After the expiration of the 7-day period which begins on the date the Mayor notifies the Council of the nomination under subparagraph (B) of this paragraph, the Mayor shall notify the Authority of the nomination.

(D) The nomination shall be effective subject to approval by a majority vote of the Authority.

(b) *Term.* —

(1) *In general.* — All appointments made after June 30, 2007, shall be for a term of 5 years, except for appointments made for the remainder of unexpired terms. The appointments shall have an anniversary date of July 1.

(2) *Transition.* — For purposes of §§ 1-204.24a — 1-204.24f, the individual serving as Chief Financial Officer as of October 16, 2006, shall be deemed to have been appointed under this subsection, except that such individual’s initial term of office shall begin upon such date and shall end on June 30, 2007.

(3) *Continuance.* — Any Chief Financial Officer may continue to serve beyond his term until a successor takes office.

(4) *Vacancies.* — Any vacancy in the Office of Chief Financial Officer shall

be filled in the same manner as the original appointment under subsection (a) of this section.

(5) *Pay.* — The Chief Financial Officer shall be paid at an annual rate equal to the rate of basic pay payable for level I of the Executive Schedule.

(Dec. 24, 1973, 87 Stat. 774, Pub. L. 93-198, § 424(b), as added Apr. 17, 1995, 109 Stat. 142, Pub. L. 104-8, § 302(a); Nov. 22, 2000, 114 Stat. 2440, Pub. L. 106-522, § 155(a); Dec. 21, 2001, 115 Stat. 949, Pub. L. 107-96, § 111(d); Oct. 16, 2006, 120 Stat. 2031, Pub. L. 109-356, § 201(a).)

Prior Codifications. — 1981 Ed., § 47-317.2.

Effect of amendments. — Public Law 106-522 in subsec. (a) added at the end of par. (1)(B) "Upon confirmation by the Council, the name of the Chief Financial Officer shall be submitted to the Committees on Appropriations of the Senate and House of Representatives, the Committee on Governmental Affairs of the Senate, and the Committee on Government Reform of the House of Representatives for a 30-day period of review and comment before the appointment takes effect."; and in par. (2)(B), struck the period at the end and inserted the following: "upon dismissal by the Mayor and approval of that dismissal by a $\frac{2}{3}$ vote of the Council. Upon approval of the dismissal by the Council, notice of the dismissal shall be submitted to the Committees on Appropriations of the Senate and House of Representatives, the Committee on Governmental Affairs of the Senate, and the Committee on Government Reform of the House of Representatives for a 30-day period of review and comment before the dismissal takes effect."

Pub. L. 107-96, in subsec. (c), substituted "equal to" for "determined by the Mayor, except that such rate may not exceed", and substituted "level I" for "level IV".

Pub. L. 109-356 rewrote the section which had read as follows:

"(a) In general. — (1) Control year.—During a control year, the Chief Financial Officer shall be appointed by the Mayor as follows: (A) Prior to the appointment of the Chief Financial Officer, the Authority may submit recommendations for the appointment to the Mayor. (B) In consultation with the Authority and the Council, the Mayor shall nominate an individual for appointment and notify the Council of the nomination. (C) After the expiration of the 7-day period which begins on the date the Mayor notifies the Council of the nomination under subparagraph (B) of this paragraph, the Mayor

shall notify the Authority of the nomination. (D) The nomination shall be effect approval by a majority vote of the Authority.

"(2) Other years.—During a year other than a control year, the Chief Financial Officer shall be appointed by the Mayor with the advice and consent of the Council. Prior to appointment, the Authority may submit recommendations for the appointment. Upon confirmation by the Council, the name of the Chief Financial Officer shall be submitted to the Committees on Appropriations of the Senate and House of Representatives, the Committee on Governmental Affairs of the Senate, and the Committee on Government Reform of the House of Representatives for a 30-day period of review and comment before the appointment takes effect.

"(b) Removal. — (1) Control year.—During a control year, the Chief Financial Officer may be removed for cause by the Authority or by the Mayor with the approval of the Authority.

"(2) Other years.—During a year other than a control year, the Chief Financial Officer shall serve at the pleasure of the Mayor, except that the Chief Financial Officer may only be removed for cause upon dismissal by the Mayor and approval of that dismissal by a $\frac{2}{3}$ vote of the Council. Upon approval of the dismissal by the Council, notice of the dismissal shall be submitted to the Committees on Appropriations of the Senate and House of Representatives, the Committee on Governmental Affairs of the Senate, and the Committee on Government Reform of the House of Representatives for a 30-day period of review and comment before the dismissal takes effect.

"(c) Salary.—The Chief Financial Officer shall be paid at an annual rate equal to the rate of basic pay payable for level I of the Executive Schedule."

Effective date. — Pub. L. 107-96, § 111(e), provided that: "The amendment made by subsection (d) shall apply with respect to pay periods in fiscal year 2002 and each succeeding fiscal year."

§ 1-204.24c. Removal of the Chief Financial Officer.

(a) *In general.* — The Chief Financial Officer may only be removed for cause by the Mayor, subject to the approval of the Council by a resolution approved

by not fewer than $\frac{2}{3}$ of the members of the Council. After approval of the resolution by the Council, notice of the removal shall be submitted to the Committees on Appropriations of the House of Representatives and Senate, the Committee on Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate for a 30-day period of review and comment before the removal takes effect.

(b) *Special rule for control years.* — During a control year, the Chief Financial Officer may be removed for cause by the Authority or by the Mayor with the approval of the Authority.

(Dec. 24, 1973, 87 Stat. 774, Pub. L. 93-198, § 424(c), as added Apr. 17, 1995, 109 Stat. 142, Pub. L. 104-8, § 302(a); Nov. 22, 2000, 114 Stat. 2440, Pub. L. 106-522, § 155(b)(1); Dec. 23, 2004, 118 Stat. 3970, Pub. L. 108-489, § 4(a); Oct. 16, 2006, 120 Stat. 2031, Pub. L. 109-356, § 201(a).)

Section references. — This section is referred to in § 1-204.24e.

Prior Codifications. — 1981 Ed., § 47-317.3.

Effect of amendments. — Public Law 106-522 deleted in the caption “during control year”, struck in the matter preceding paragraph (1) “During a control year, the Chief Financial Officer” and inserted “The Chief Financial Officer”; struck in paragraph “Preparing” and inserted “During a control year, preparing”; struck in paragraph (3), “Assuring” and inserted “During a control year, assuring”; rewrote paragraph (5); struck in paragraph (11), “or the Authority” and inserted “(or by the Authority during a control year)”; and added at the end new paragraphs (18) through (24).

Pub. L. 108-489, in par. (21), substituted “systems (other than the retirement system for police officers, fire fighters, and teachers)” for “systems”.

Pub. L. 109-356 rewrote this section.

Effective date. — Section 336(b) of Pub. L. 108-335 provided that the amendment made by subsection (a) shall take effect as if included in the enactment of the Emergency Wartime Supplemental Appropriations Act, 2003 Public Law 108-11.

Section 4(b) of Pub. L. 108-489 provided: “The amendment made by subsection (a) shall apply with respect to fiscal year 2005 and each succeeding fiscal year.”

References in text. — The “District of Columbia Financial Responsibility and Management Assistance Act of 1995”, referred to in (3), is Pub. L. 104-8, 109 Stat. 97.

Delegation of Authority. — Delegation of authority under D.C. Act 11-404, the “General Obligation Bond Act of 1996”, see Mayor’s Order 96-146, October 7, 1996 (43 DCR 5671).

Delegation of Authority Under the District of Columbia Revenue Act of 1970, Public Law No. 91-650, see Mayor’s Order 2006-51, April 14, 2006 (53 DCR 5300).

Editor’s notes. — Enactment upon adoption of federal legislation: Section 4 of D.C. Law 11-254 provided that “§§ 47-101, 47-117, 47-130, 47-301, 47-302, 47-303, 47-304, 47-304.1, 47-305, 47-310, 47-312, 47-317.1 through 47-317.6, 47-321 through 47-325, 47-327 through 47-331, and 47-332 through 47-334 of Title 47 [§§ 1-204.41, 1-204.55, 1-204.50, 1-204.42, 1-204.43, 1-204.44, 1-204.46, 1-204.53, 1-204.47, 1-204.48, 1-204.49, 1-204.24a through 1-204.24e, 47-317.06, 1-204.61 through 1-204.65, 1-204.71 through 1-204.75, 1-204.81, 1-204.85, 1-204.86 and 1-204.90, 2001 Ed.] of the District of Columbia Code shall be enacted as part of Title 47 upon the adoption by Congress of legislation so enacting these sections.”

Pub. L. 107-20, ch. 3, § 2301, July 23, 2001, 115 Stat. 173, provided:

“Report by the Mayor. The Mayor of the District of Columbia shall provide the House and Senate Committees on Appropriations, the Senate Committee on Governmental Affairs and the House Committee on Government Reform with a report on the specific authority necessary to carry out the responsibilities transferred to the Chief Financial Officer in a non-control year, outlined in section 155 of Public Law 106-522, the Fiscal Year 2001 District of Columbia Appropriations Act, and responsibilities outlined in Bill 14-254, passed by the Council of the District of Columbia on July 10, 2001 relating to the transition of responsibilities under Public Law 104-8, the District of Columbia Financial Responsibility and Management Assistance Act of 1995, within 45 days of the enactment of this Act.”

Section 409 of Pub. L. 107-206, Aug. 2, 2002, 116 Stat. 848, provided:

“Sec. 409. Effective June 30, 2002, the authority which the Chief Financial Officer of the District of Columbia exercised with respect to personnel, procurement, and the preparation of fiscal impact statements during a control pe-

riod (as defined in Public Law 104-8) shall remain in effect through July 1, 2003 or until such time as the District of Columbia Fiscal Integrity Act becomes effective, whichever occurs sooner.”

Section 2302 of Pub. L. 108-11, April 16, 2003, 117 Stat. 593, as amended by Pub. L. 108-335, § 336(a), Oct. 18, 2004, 118 Stat. 1347, provided:

“Sec. 2302. The authority which the Chief Financial Officer of the District of Columbia exercised with respect to personnel, procurement, and the preparation of fiscal impact statements during a control period (as defined in Public Law 104-8) shall remain in effect through September 30, 2005.”

§ 1-204.24d. Duties of the Chief Financial Officer.

Notwithstanding any provisions of this chapter which grant authority to other entities of the District government, the Chief Financial Officer shall have the following duties and shall take such steps as are necessary to perform these duties:

(1) During a control year, preparing the financial plan and the budget for the use of the Mayor for purposes of part B of subchapter VII of Chapter 3 of Title 47.

(2) Preparing the budgets of the District of Columbia for the year for the use of the Mayor for purposes of part D of this subchapter, and preparing the 5-year financial plan based upon the adopted budget for submission with the District of Columbia budget by the Mayor to Congress.

(3) During a control year, assuring that all financial information presented by the Mayor is presented in a manner, and is otherwise consistent with, the requirements of parts A through E of subchapter VII of Chapter 3 of Title 47.

(4) Implementing appropriate procedures and instituting such programs, systems, and personnel policies within the Chief Financial Officer's authority, to ensure that budget, accounting, and personnel control systems and structures are synchronized for budgeting and control purposes on a continuing basis and to ensure that appropriations are not exceeded.

(5) Preparing and submitting to the Mayor and the Council, with the approval of the Authority during a control year, and making public—

(A) annual estimates of all revenues of the District of Columbia (without regard to the source of such revenues), including proposed revenues, which shall be binding on the Mayor and the Council for purposes of preparing and submitting the budget of the District government for the year under part D of this subchapter, except that the Mayor and the Council may prepare the budget based on estimates of revenues which are lower than those prepared by the Chief Financial Officer; and

(B) quarterly re-estimates of the revenues of the District of Columbia during the year.

(6) Supervising and assuming responsibility for financial transactions to ensure adequate control of revenues and resources.

(7) Maintaining systems of accounting and internal control designed to provide —

(A) full disclosure of the financial impact of the activities of the District government;

(B) adequate financial information needed by the District government for management purposes;

(C) effective control over, and accountability for, all funds, property, and other assets of the District of Columbia; and

(D) reliable accounting results to serve as the basis for preparing and supporting agency budget requests and controlling the execution of the budget.

(8) Submitting to the Council a financial statement of the District government, containing such details and at such times as the Council may specify.

(9) Supervising and assuming responsibility for the assessment of all property subject to assessment and special assessments within the corporate limits of the District of Columbia for taxation, preparing tax maps, and providing such notice of taxes and special assessments (as may be required by law).

(10) Supervising and assuming responsibility for the levying and collection of all taxes, special assessments, licensing fees, and other revenues of the District of Columbia (as may be required by law), and receiving all amounts paid to the District of Columbia from any source (including the Authority).

(11) Maintaining custody of all public funds belonging to or under the control of the District government (or any department or agency of the District government), and depositing all amounts paid in such depositories and under such terms and conditions as may be designated by the Council (or by the Authority during a control year).

(12) Maintaining custody of all investment and invested funds of the District government or in possession of the District government in a fiduciary capacity, and maintaining the safekeeping of all bonds and notes of the District government and the receipt and delivery of District government bonds and notes for transfer, registration, or exchange.

(13) Apportioning the total of all appropriations and funds made available during the year for obligation so as to prevent obligation or expenditure in a manner which would result in a deficiency or a need for supplemental appropriations during the year, and (with respect to appropriations and funds available for an indefinite period and all authorizations to create obligations by contract in advance of appropriations) apportioning the total of such appropriations, funds, or authorizations in the most effective and economical manner.

(14) Certifying all contracts and leases (whether directly or through delegation) prior to execution as to the availability of funds to meet the obligations expected to be incurred by the District government under such contracts and leases during the year.

(15) Prescribing the forms of receipts, vouchers, bills, and claims to be used by all agencies, offices, and instrumentalities of the District government.

(16) Certifying and approving prior to payment of all bills, invoices, payrolls, and other evidences of claims, demands, or charges against the District government, and determining the regularity, legality, and correctness of such bills, invoices, payrolls, claims, demands, or charges.

(17) In coordination with the Inspector General of the District of Columbia, performing internal audits of accounts and operations and records of the

District government, including the examination of any accounts or records of financial transactions, giving due consideration to the effectiveness of accounting systems, internal control, and related administrative practices of the departments and agencies of the District government.

(18) Exercising responsibility for the administration and supervision of the District of Columbia Treasurer.

(19) Supervising and administering all borrowing programs for the issuance of long-term and short-term indebtedness, as well as other financing-related programs of the District government.

(20) Administering the cash management program of the District government, including the investment of surplus funds in governmental and non-governmental interest-bearing securities and accounts.

(21) Administering the centralized District government payroll and retirement systems (other than the retirement system for police officers, fire fighters, and teachers).

(22) Governing the accounting policies and systems applicable to the District government.

(23) Preparing appropriate annual, quarterly, and monthly financial reports of the accounting and financial operations of the District government.

(24) Not later than 120 days after the end of each fiscal year, preparing the complete financial statement and report on the activities of the District government for such fiscal year, for the use of the Mayor under § 1-204.48(a)(4).

(25) Preparing fiscal impact statements on regulations, multiyear contracts, contracts over \$ 1,000,000 and on legislation, as required by § 1-301.47a.

(26) Preparing under the direction of the Mayor, who has the specific responsibility for formulating budget policy using Chief Financial Officer technical and human resources, the budget for submission by the Mayor to the Council and to the public and upon final adoption to Congress and to the public.

(27) Certifying all collective bargaining agreements and nonunion pay proposals prior to submission to the Council for approval as to the availability of funds to meet the obligations expected to be incurred by the District government under such collective bargaining agreements and nonunion pay proposals during the year.

(28) With respect to attorneys in special education cases brought under the Individuals with Disabilities Education Act in the District of Columbia during fiscal year 2006 and each succeeding fiscal year —

(A) requiring such attorneys to certify in writing that the attorney or representative of the attorney rendered any and all services for which the attorney received an award in such a case, including those received under a settlement agreement or as part of an administrative proceeding, from the District of Columbia;

(B) requiring such attorneys, as part of the certification under subparagraph (A) of this paragraph, to disclose any financial, corporate, legal, membership on boards of directors, or other relationships with any special

education diagnostic services, schools, or other special education service providers to which the attorneys have referred any clients in any such cases; and

(C) preparing and submitting quarterly reports to the Committees on Appropriations of the House of Representatives and Senate on the certification of and the amount paid by the government of the District of Columbia, including the District of Columbia Public Schools, to such attorneys.

(Dec. 24, 1973, 87 Stat. 774, Pub. L. 93-198, § 424(d), as added Apr. 17, 1995, 109 Stat. 142, Pub. L. 104-8, § 302(a); Nov. 22, 2000, 114 Stat. 2440, Pub. L. 106-522, § 155(b)(2)(A); repealed Nov. 22, 2000, 114 Stat. 2440, Pub. L. 106-522, § 155(b)(2)(C); restored as § 424(d), Oct. 16, 2006, 120 Stat. 2034, 2042, Pub. L. 109-356, §§ 201(a), 308(a).)

Prior Codifications. — 1981 Ed., § 47-317.4.

Effect of amendments. — Pub. L. 106-522, in par. (2), deleted “or § 47-317.4 1981 Ed.” following “§ 47-317.3 § 1-204.24c, 2001 Ed.”.

Pub. L. 109-356 rewrote the section which had previously read:

“§ 1-204.24d. Functions of Treasurer.

“At all times, the Treasurer shall have the following duties:

“(1) Assisting the Chief Financial Officer in reporting revenues received by the District government, including submitting annual and quarterly reports concerning the cash position of the District government not later than 60 days after the last day of the quarter (or year) involved. Such reports shall include:

“(A) Comparative reports of revenue and other receipts by source, including tax, nontax, and Federal revenues, grants and reimbursements, capital program loans, and advances. Each source shall be broken down into specific components.

“(B) Statements of the cash flow of the District government for the preceding quarter or year, including receipts, disbursements, net changes in cash inclusive of the beginning balance, cash and investment, and the ending balance, inclusive of cash and investment. Such statements shall reflect the actual, planned, better or worse dollar amounts and the percentage change with respect to the current quarter, year-to-date, and fiscal year;

“(C) Quarterly cash flow forecast for the quarter or year involved, reflecting receipts, disbursements, net change in cash inclusive of the beginning balance, cash and investment, and the ending balance, inclusive of cash and investment with respect to the actual dollar amounts for the quarter or year, and projected dollar amounts for each of the 3 succeeding quarters;

“(D) Monthly reports reflecting a detailed summary analysis of all District of Columbia government investments, including, but not limited to:

“(i) The total of long-term and short-term investments;

“(ii) A detailed summary analysis of investments by type and amount, including purchases, sales (maturities), and interest;

“(iii) An analysis of investment portfolio mix by type and amount, including liquidity, quality/risk of each security, and similar information;

“(iv) An analysis of investment strategy, including near-term strategic plans and projects of investment activity, as well as forecasts of future investment strategies based on anticipated market conditions, and similar information; and

“(v) An analysis of cash utilization, including:

“(I) Comparisons of budgeted percentages of total cash to be invested with actual percentages of cash invested and the dollar amounts;

“(II) Comparisons of the next return on invested cash expressed in percentages (yield) with comparable market indicators and established District of Columbia government yield objectives; and

“(III) Comparisons of estimated dollar return against actual dollar yield; and

“(E) Monthly reports reflecting a detailed summary analysis of long-term and short-term borrowings inclusive of debt as authorized by § 1-206.03, in the current fiscal year and the amount of debt for each succeeding fiscal year not to exceed 5 years; all such reports shall reflect:

“(i) The amount of debt outstanding by type of instrument;

“(ii) The amount of authorized and unissued debt, including availability of short-term lines of credit, United States Treasury borrowings, and similar information;

“(iii) A maturity schedule of the debt;

“(iv) The rate of interest payable upon the debt; and

“(v) The amount of debt service requirements and related debt service reserves; and

“(2) Such other functions assigned to the

Chief Financial Officer under § 1-204.24c as the Chief Financial Officer may delegate.”

References in text. — The Individuals with Disabilities Education Act, referred to in par. (28), is codified at 20 U.S.C. § 1400 et seq.

Editor’s notes. — Former § 1-204.24d, re-

lating to functions during all years, derived from Dec. 24, 1973, 87 Stat. 774, Pub. L. 93-198, § 424(d), as added Apr. 17, 1995, 109 Stat. 142, Pub. L. 104-8, § 302(a), was repealed by Nov. 22, 2000, 114 Stat. 2440, Pub. L. 106-522, § 155(b)(2)(A).

§ 1-204.24e. Functions of Treasurer.

At all times, the Treasurer shall have the following duties:

(1) Assisting the Chief Financial Officer in reporting revenues received by the District government, including submitting annual and quarterly reports concerning the cash position of the District government not later than 60 days after the last day of the quarter (or year) involved. Each such report shall include the following:

(A) Comparative reports of revenue and other receipts by source, including tax, nontax, and Federal revenues, grants and reimbursements, capital program loans, and advances. Each source shall be broken down into specific components.

(B) Statements of the cash flow of the District government for the preceding quarter or year, including receipts, disbursements, net changes in cash inclusive of the beginning balance, cash and investment, and the ending balance, inclusive of cash and investment. Such statements shall reflect the actual, planned, better or worse dollar amounts and the percentage change with respect to the current quarter, year-to-date, and fiscal year.

(C) Quarterly cash flow forecast for the quarter or year involved, reflecting receipts, disbursements, net change in cash inclusive of the beginning balance, cash and investment, and the ending balance, inclusive of cash and investment with respect to the actual dollar amounts for the quarter or year, and projected dollar amounts for each of the 3 succeeding quarters.

(D) Monthly reports reflecting a detailed summary analysis of all District of Columbia government investments, including —

(i) the total of long-term and short-term investments;

(ii) a detailed summary analysis of investments by type and amount, including purchases, sales (maturities), and interest;

(iii) an analysis of investment portfolio mix by type and amount, including liquidity, quality/risk of each security, and similar information;

(iv) an analysis of investment strategy, including near-term strategic plans and projects of investment activity, as well as forecasts of future investment strategies based on anticipated market conditions, and similar information; and

(v) an analysis of cash utilization, including —

(I) comparisons of budgeted percentages of total cash to be invested with actual percentages of cash invested and the dollar amounts;

(II) comparisons of the next return on invested cash expressed in percentages (yield) with comparable market indicators and established District of Columbia government yield objectives; and

(III) comparisons of estimated dollar return against actual dollar yield.

(E) Monthly reports reflecting a detailed summary analysis of long-term and short-term borrowings inclusive of debt as authorized by § 1-206.03, in the current fiscal year and the amount of debt for each succeeding fiscal year not to exceed 5 years. All such reports shall reflect —

- (i) the amount of debt outstanding by type of instrument;
- (ii) the amount of authorized and unissued debt, including availability of short-term lines of credit, United States Treasury borrowings, and similar information;
- (iii) a maturity schedule of the debt;
- (iv) the rate of interest payable upon the debt; and
- (v) the amount of debt service requirements and related debt service reserves.

(2) Such other functions assigned to the Chief Financial Officer under subsection (d) as the Chief Financial Officer may delegate.

(Dec. 24, 1973, 87 Stat. 774, Pub. L. 93-198, § 424(e), as added Apr. 17, 1995, 109 Stat. 142, Pub. L. 104-8, § 302(a); redesignated § 424(d), Nov. 22, 2000, 114 Stat. 2440, Pub. L. 106-522, § 155(b)(2)(B), (C); restored as § 424(e), Oct. 16, 2006, 120 Stat. 2034, Pub. L. 109-356, § 201(a).)

Prior Codifications. — 1981 Ed., § 47-317.5.

Effect of amendments. — Pub. L. 109-356 rewrote the section which had previously read:

“§ 1-204.24e. Definitions.

“In this part:

“(1) the term ‘Authority’ means the District of

Columbia Financial Responsibility and Management Assistance Authority established under § 47-391.01(a);

“(2) the term ‘control year’ has the meaning given such term under § 47-393(4); and

“(3) the term ‘District government’ has the meaning given such term under § 47-393(5).”

§ 1-204.24f. Definitions.

For purposes of this part —

(1) the term “Authority” means the District of Columbia Financial Responsibility and Management Assistance Authority established under § 47-391.01(a);

(2) the term “control year” has the meaning given such term under § 47-393(4); and

(3) the term “District government” has the meaning given such term under § 47-393(5).

(Dec. 24, 1973, 87 Stat. 774, Pub. L. 93-198, § 424(f), as added Apr. 17, 1995, 109 Stat. 142, Pub. L. 104-8, § 302(a); redesignated § 424(e), Nov. 22, 2000, 114 Stat. 2440, Pub. L. 106-522, § 155(b)(2)(C); Oct. 16, 2006, 120 Stat. 2034, Pub. L. 109-356, § 201(a); restored as § 424(f), Oct. 16, 2006, 120 Stat. 2035, Pub. L. 109-356, § 201(a).)

Effect of amendments. — Pub. L. 109-356 rewrote the section which had previously read:

“§ 1-204.24f. Definitions.

“In this part:

“(1) the term ‘Authority’ means the District of Columbia Financial Responsibility and Man-

agement Assistance Authority established under § 47-391.01(a);

“(2) the term ‘control year’ has the meaning given such term under § 47-393(4); and

“(3) the term ‘District government’ has the meaning given such term under § 47-393(5).”

§ 1-204.25. Authority of Chief Financial Officer over personnel of Office and other financial personnel.

(a) *In general.* — Notwithstanding any provision of law or regulation (including any law or regulation providing for collective bargaining or the enforcement of any collective bargaining agreement), employees of the Office of the Chief Financial Officer of the District of Columbia, including personnel described in subsection (b) of this section, shall be appointed by, shall serve at the pleasure of, and shall act under the direction and control of the Chief Financial Officer of the District of Columbia, and shall be considered at-will employees not covered by Chapter 6 of this title, except that nothing in this section may be construed to prohibit the Chief Financial Officer from entering into a collective bargaining agreement governing such employees and personnel or to prohibit the enforcement of such an agreement as entered into by the Chief Financial Officer.

(b) *Personnel.* — The personnel described in this subsection are as follows:

(1) The General Counsel to the Chief Financial Officer and all other attorneys in the Office of the General Counsel within the Office of the Chief Financial Officer of the District of Columbia, together with all other personnel of the Office.

(2) All other individuals hired or retained as attorneys by the Chief Financial Officer or any office under the personnel authority of the Chief Financial Officer, each of whom shall act under the direction and control of the General Counsel to the Chief Financial Officer.

(3) The heads and all personnel of the subordinate offices of the Office (as described in § 1-204.24a(b) and established as subordinate offices in section § 1-204.24a(c)) and the Chief Financial Officers, Agency Fiscal Officers, and Associate Chief Financial Officers of all District of Columbia executive branch subordinate and independent agencies (in accordance with subsection (c)), together with all other District of Columbia accounting, budget, and financial management personnel (including personnel of executive branch independent agencies, but not including personnel of the legislative or judicial branches of the District government).

(c) *Appointment of certain executive branch agency Chief Financial Officers.*

(1) *In general.* — The Chief Financial Officers and Associate Chief Financial Officers of all District of Columbia executive branch subordinate and independent agencies (other than those of a subordinate office of the Office) shall be appointed by the Chief Financial Officer, in consultation with the agency head, where applicable. The appointment shall be made from a list of qualified candidates developed by the Chief Financial Officer.

(2) *Transition.* — Any executive branch agency Chief Financial Officer appointed prior to October 16, 2006, may continue to serve in that capacity without reappointment.

(d) *Independent authority over legal personnel.* — Subchapter VIII-B of Chapter 6 of this title shall not apply to the Office of the Chief Financial Officer or to attorneys employed by the Office.

(e) *Inapplicability to Water and Sewer Authority.* — The authority of the Chief Financial Officer under this section does not apply to personnel of the District of Columbia Water and Sewer Authority established pursuant to the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996.

(Dec. 24, 1973, 87 Stat. 774, Pub. L. 93-198, § 424a, as added Oct. 16, 2006, 120 Stat. 2037, Pub. L. 109-356, § 202(a)(1); July 15, 2008, 122 Stat. 2491, Pub. L. 110-273, § 2(a).)

Effect of amendments. — Pub. L. 110-273 added subsec. (e).

Effective date. — Section 2(b) of Pub. L. 110-273 provided that the amendments made by subsection (a) shall take effect as if included in the enactment of the 2005 District of Columbia Omnibus Authorization Act Pub. L. 109-356

References in text. — The “Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996,” referred to in subsec. (e), is D.C. Law 11-111, which is codified primarily as § 34-2201.01 et seq.

§ 1-204.26. Procurement authority of the Chief Financial Officer.

The Chief Financial Officer shall carry out procurement of goods and services for the Office of the Chief Financial Officer through a procurement office or division which shall operate independently of, and shall not be governed by, the Office of Contracting and Procurement established under Unit A of Chapter 3 of Title 2 or any successor office, except the provisions applicable under such unit to procurement carried out by the Chief Procurement Officer established by § 2-301.05 or any successor office shall apply with respect to the procurement carried out by the Chief Financial Officer’s procurement office or division.

(Dec. 24, 1973, 87 Stat. 774, Pub. L. 93-198, § 424b, as added Oct. 16, 2006, 120 Stat. 2037, Pub. L. 109-356, § 203(a)(1).)

Effective date. — Section 203(c) of Pub. L. 109-356, as amended by Pub. L. 110-5, § 21073(h), provided: “This section and the amendments made by this section shall take effect October 16, 2007.”

Part C

THE JUDICIARY.

§ 1-204.31. Judicial powers.

(a) The judicial power of the District is vested in the District of Columbia Court of Appeals and the Superior Court of the District of Columbia. The Superior Court has jurisdiction of any civil action or other matter (at law or in equity) brought in the District and of any criminal case under any law applicable exclusively to the District. The Superior Court has no jurisdiction over any civil or criminal matter over which a United States court has

exclusive jurisdiction pursuant to an Act of Congress. The Court of Appeals has jurisdiction of appeals from the Superior Court and, to the extent provided by law, to review orders and decisions of the Mayor, the Council, or any agency of the District. The District of Columbia courts shall also have jurisdiction over any other matters granted to the District of Columbia courts by other provisions of law.

(b) The chief judge of a District of Columbia court shall be designated by the District of Columbia Judicial Nominating [Nomination] Commission established by § 1-204.34 from among the judges of the court in regular active service, and shall serve as chief judge for a term of four years or until a successor is designated, except that the term as chief judge shall not extend beyond the chief judge's term as a judge of a District of Columbia court. An individual shall be eligible for redesignation as chief judge.

(c) A judge of a District of Columbia court appointed on or after the date of enactment of the District of Columbia Court Reorganization Act of 1970 [July 29, 1970] shall be appointed for a term of fifteen years subject to mandatory retirement at age seventy-four or removal, suspension, or involuntary retirement pursuant to § 1-204.32 and upon completion of such term, such judge shall continue to serve until reappointed or a successor is appointed and qualifies. A judge may be reappointed as provided in subsection (c) of § 1-204.33.

(d)(1) There is established a District of Columbia Commission on Judicial Disabilities and Tenure (hereinafter referred to as the "Tenure Commission"). The Tenure Commission shall consist of seven members selected in accordance with the provisions of subsection (e). Such members shall serve for terms of six years, except that the member selected in accordance with subsection (e)(3)(A) shall serve for five years; of the members first selected in accordance with subsection (e)(3)(B), one member shall serve for three years and one member shall serve for six years; of the members first selected in accordance with subsection (e)(3)(C), one member shall serve for a term of three years and one member shall serve for five years; the member first selected in accordance with subsection (e)(3)(D) shall serve for six years; and the member first appointed in accordance with subsection (e)(3)(E) shall serve for six years. In making the respective first appointments according to subsections (e)(3)(B) and (e)(3)(C), the Mayor and the Board of Governors of the unified District of Columbia Bar shall designate, at the time of such appointments, which member shall serve for the shorter term and which member shall serve for the longer term.

(2) The Tenure Commission shall act only at meetings called by the Chairman or a majority of the Tenure Commission held after notice has been given of such meeting to all Tenure Commission members.

(3) The Tenure Commission shall choose annually, from among its members, a Chairman and such other officers as it may deem necessary. The Tenure Commission may adopt such rules of procedures not inconsistent with this chapter as may be necessary to govern the business of the Tenure Commission.

(4) The District government shall furnish to the Tenure Commission, upon the request of the Tenure Commission, such records, information, services, and such other assistance and facilities as may be necessary to enable

the Tenure Commission properly to perform its functions. Information so furnished shall be treated by the Tenure Commission as privileged and confidential.

(e)(1) No person may be appointed to the Tenure Commission unless such person —

(A) is a citizen of the United States;

(B) is a bona fide resident of the District and has maintained an actual place of abode in the District for at least ninety days immediately prior to appointment; and

(C) is not an officer or employee of the legislative branch or of an executive or military department or agency of the United States (listed in sections 101 and 102 of title 5 of the United States Code); and (except with respect to the person appointed or designated according to paragraph (3)(E)) is not an officer or employee of the judicial branch of the United States, or an officer or employee of the District government (including its judicial branch).

(2) Any vacancy on the Tenure Commission shall be filled in the same manner in which the original appointment was made. Any person so appointed to fill a vacancy occurring other than upon the expiration of a prior term shall serve only for the remainder of the unexpired term of such person's predecessor.

(3) In addition to all other qualifications listed in this section, lawyer members of the Tenure Commission shall have the qualifications prescribed for persons appointed as judges of the District of Columbia courts. Members of the Tenure Commission shall be appointed as follows:

(A) One member shall be appointed by the President of the United States.

(B) Two members shall be appointed by the Board of Governors of the unified District of Columbia Bar, both of whom shall have been engaged in the practice of law in the District for at least five successive years preceding their appointment.

(C) Two members shall be appointed by the Mayor, one of whom shall not be a lawyer.

(D) One member shall be appointed by the Council, and shall not be a lawyer.

(E) One member shall be appointed by the chief judge of the United States District Court for the District of Columbia, and such member shall be an active or retired Federal judge serving in the District.

No person may serve at the same time on both the District of Columbia Judicial Nomination Commission and on the District of Columbia Commission on Judicial Disabilities and Tenure.

(f) Any member of the Tenure Commission who is an active or retired Federal judge shall serve without additional compensation. Other members shall receive the daily equivalent at the rate provided by grade 18 of the General Schedule, established under section 5332 of title 5 of the United States Code, while actually engaged in service for the Commission.

(g) The Tenure Commission shall have the power to suspend, retire, or remove a judge of a District of Columbia court as provided in § 1-204.32 and to

make recommendations regarding the appointment of senior judges of the District of Columbia courts as provided in § 11-1504.

(Dec. 24, 1973, 87 Stat. 792, Pub. L. 93-198, title IV, § 431; Oct. 13, 1977, 91 Stat. 1155, Pub. L. 95-131, § 3(a); Oct. 30, 1984, 98 Stat. 3142, Pub. L. 98-598, § 2(b); Oct. 28, 1986, 100 Stat. 3228, Pub. L. 99-573, § 4; June 13, 1994, Pub. L. 103-266, §§ 2(b)(1), 2(b)(2), 2(b)(3), 108 Stat. 713.)

Prior Codifications. — 1981 Ed., Title 11, appx., § 431. 1973 Ed., Title 11, appx., § 431.

CASE NOTES

Construction and application.

Court of Appeals' authority to regulate the practice of law and discipline attorneys is not exclusive such that the legislative branch, in the exercise of its police power, is precluded by the Home Rule Act (HRA) from enacting an otherwise valid statute restricting, *inter alia*,

certain practices by members of the District of Columbia Bar. *Bergman v. District of Columbia*, 986 A.2d 1208, 2010 D.C. App. LEXIS 3 (2010), writ of certiorari denied by 131 S. Ct. 179, 178 L. Ed. 2d 41, 2010 U.S. LEXIS 5915, 79 U.S.L.W. 3196 (U.S. 2010).

§ 1-204.32. Removal, suspension, and involuntary retirement.

(a)(1) A judge of a District of Columbia court shall be removed from office upon the filing in the District of Columbia Court of Appeals by the Tenure Commission of an order of removal certifying the entry, in any court within the United States, of a final judgment of conviction of a crime which is punishable as a felony under Federal law or which would be a felony in the District.

(2) A judge of a District of Columbia court shall also be removed from office upon affirmance of an appeal from an order of removal filed in the District of Columbia Court of Appeals by the Tenure Commission (or upon expiration of the time within which such an appeal may be taken) after a determination by the Tenure Commission of —

(A) willful misconduct in office,

(B) willful and persistent failure to perform judicial duties, or

(C) any other conduct which is prejudicial to the administration of justice or which brings the judicial office into disrepute.

(b) A judge of a District of Columbia court shall be involuntarily retired from office when (1) the Tenure Commission determines that the judge suffers from a mental or physical disability (including habitual intemperance) which is or is likely to become permanent and which prevents, or seriously interferes with, the proper performance of judicial duties, and (2) the Tenure Commission files in the District of Columbia Court of Appeals an order of involuntary retirement and the order is affirmed on appeal or the time within which an appeal may be taken from the order has expired.

(c)(1) A judge of a District of Columbia court shall be suspended, without salary—

(A) upon—

(i) proof of conviction of a crime referred to in subsection (a)(1) which has not become final, or

(ii) the filing of an order of removal under subsection (a)(2) which has not become final; and

(B) upon the filing by the Tenure Commission of an order of suspension in the District of Columbia Court of Appeals.

Suspension under this paragraph shall continue until termination of all appeals. If the conviction is reversed or the order of removal is set aside, the judge shall be reinstated and shall recover any salary and all other rights and privileges of office.

(2) A judge of a District of Columbia court shall be suspended from all judicial duties, with such retirement salary as the judge may be entitled, upon the filing by the Tenure Commission of an order of involuntary retirement under subsection (b) in the District of Columbia Court of Appeals. Suspension shall continue until termination of all appeals. If the order of involuntary retirement is set aside, the judge shall be reinstated and shall recover judicial salary less any retirement salary received and shall be entitled to all the rights and privileges of office.

(3) A judge of a District of Columbia court shall be suspended from all or part of the judge's judicial duties, with salary, if the Tenure Commission, upon concurrence of five members, (A) orders a hearing for the removal or retirement of the judge pursuant to this part and determines that such suspension is in the interest of the administration of justice, and (B) files an order of suspension in the District of Columbia Court of Appeals. The suspension shall terminate as specified in the order (which may be modified, as appropriate, by the Tenure Commission) but in no event later than the termination of all appeals.

(Dec. 24, 1973, 87 Stat. 794, Pub. L. 93-198, title IV, § 432; June 13, 1994, Pub. L. 103-266, §§ 2(b)(4), (5), 108 Stat. 713.)

Prior Codifications. — 1981 Ed., Title 11, 1973 Ed., Title 11, appx., § 432.
appx., § 432.

§ 1-204.33. Nomination and appointment of judges.

(a) Except as provided in § 1-204.34(d)(1), the President shall nominate, from the list of persons recommended by the District of Columbia Judicial Nomination Commission established under § 1-204.34, and, by and with the advice and consent of the Senate, appoint all judges of the District of Columbia courts.

(b) No person may be nominated or appointed a judge of a District of Columbia court unless the person —

(1) is a citizen of the United States;

(2) is an active member of the unified District of Columbia Bar and has been engaged in the active practice of law in the District for the five years immediately preceding the nomination or for such five years has been on the faculty of a law school in the District, or has been employed as a lawyer by the United States or the District of Columbia government;

(3) is a bona fide resident of the District of Columbia and has maintained an actual place of abode in the District for at least ninety days immediately

prior to the nomination, and shall retain such residency while serving as such judge, except judges appointed prior to the effective date of this part who retain residency as required by § 11-1501(a) shall not be required to be residents of the District to be eligible for reappointment or to serve any term to which reappointed;

(4) is recommended to the President, for such nomination and appointment, by the District of Columbia Judicial Nomination Commission; and

(5) has not served, within a period of two years prior to the nomination, as a member of the Tenure Commission or of the District of Columbia Judicial Nomination Commission.

(c) Not less than six months prior to the expiration of the judge's term of office, any judge of the District of Columbia courts may file with the Tenure Commission a declaration of candidacy for reappointment. If a declaration is not so filed by any judge, a vacancy shall result from the expiration of the term of office and shall be filled by appointment as provided in subsections (a) and (b) of this section. If a declaration is so filed, the Tenure Commission shall, not less than sixty days prior to the expiration of the declaring candidate's term of office, prepare and submit to the President a written evaluation of the declaring candidate's performance during the present term of office and the candidate's fitness for reappointment to another term. If the Tenure Commission determines the declaring candidate to be well qualified for reappointment to another term, then the term of such declaring candidate shall be automatically extended for another full term, subject to mandatory retirement, suspension, or removal. If the Tenure Commission determines the declaring candidate to be qualified for reappointment to another term, then the President may nominate such candidate, in which case the President shall submit to the Senate for advice and consent the renomination of the declaring candidate as judge. If the President determines not to so nominate such declaring candidate, the President shall nominate another candidate for such position only in accordance with the provisions of subsections (a) and (b) of this section. If the Tenure Commission determines the declaring candidate to be unqualified for reappointment to another term, then the President shall not submit to the Senate for advice and consent the renomination of the declaring candidate as judge and such judge shall not be eligible for reappointment or appointment as a judge of a District of Columbia court.

(Dec. 24, 1973, 87 Stat. 795, Pub. L. 93-198, title IV, § 433; Oct. 28, 1986, 100 Stat. 3228, Pub. L. 99-573, §§ 12, 13; June 13, 1994, Pub. L. 103-266, §§ 2(b)(6), 2(b)(7), 2(b)(8), 108 Stat. 713; Sept. 9, 1996, 110 Stat. 2369, Pub. L. 104-194, § 131(b); Apr. 26, 1996, 110 Stat. 1321 210, Pub. L. 104-134, § 133(b).)

Prior Codifications. — 1981 Ed., Title 11, appx., § 433.

1973 Ed., Title 11, appx., § 433.

Editor's notes. — Section 133(b) of Public Law 104-134, 110 Stat. 1321 210, amended (b)(5) to read as follows: "(5) Members of the commission shall serve without compensation

for services rendered in connection with their official duties on the Commission." Section 131(b) of Public Law 104-194, 110 Stat. 2369, repealed § 133(b) of Pub. L. 104-134 and provided that the provision of law amended by such section is hereby restored as if such section had not been enacted into law.

§ 1-204.34. District of Columbia Judicial Nomination Commission.

(a) There is established for the District of Columbia the District of Columbia Judicial Nomination Commission (hereafter in this section referred to as the "Commission"). The Commission shall consist of seven members selected in accordance with the provisions of subsection (b). Such members shall serve for terms of six years, except that the member selected in accordance with subsection (b)(4)(A) shall serve for five years; of the members first selected in accordance with subsection (b)(4)(B), one member shall serve for three years and one member shall serve for six years; of the members first selected in accordance with subsection (b)(4)(C), one member shall serve for a term of three years and one member shall serve for five years; the member first selected in accordance with subsection (b)(4)(D) shall serve for six years; and the member first appointed in accordance with subsection (b)(4)(E) shall serve for six years. In making the respective first appointments according to subsections (b)(4)(B) and (b)(4)(C), the Mayor and the Board of Governors of the unified District of Columbia Bar shall designate, at the time of such appointments, which member shall serve for the shorter term and which member shall serve for the longer term.

(b)(1) No person may be appointed to the Commission unless the person —

(A) is a citizen of the United States;

(B) is a bona fide resident of the District and has maintained an actual place of abode in the District for at least 90 days immediately prior to appointment; and

(C) is not a member, officer, or employee of the legislative branch or of an executive or military department or agency of the United States (listed in sections 101 and 102 of title 5 of the United States Code); and (except with respect to the person appointed or designated according to paragraph (4)(E)) is not an officer or employee of the judicial branch of the United States, or an officer or employee of the District government (including its judicial branch).

(2) Any vacancy on the Commission shall be filled in the same manner in which the original appointment was made. Any person so appointed to fill a vacancy occurring other than upon the expiration of a prior term shall serve only for the remainder of the unexpired term of such person's predecessor.

(3) It shall be the function of the Commission to submit nominees for appointment to positions as judges of the District of Columbia courts in accordance with § 1-204.33.

(4) In addition to all other qualifications listed in this section, lawyer members of the Commission shall have the qualifications prescribed for persons appointed as judges for the District of Columbia courts. Members of the Commission shall be appointed as follows:

(A) One member shall be appointed by the President of the United States.

(B) Two members shall be appointed by the Board of Governors of the unified District of Columbia Bar, both of whom shall have been engaged in the practice of law in the District for at least five successive years preceding their appointment.

(C) Two members shall be appointed by the Mayor, one of whom shall not be a lawyer.

(D) One member shall be appointed by the Council, and shall not be a lawyer.

(E) One member shall be appointed by the chief judge of the United States District Court for the District of Columbia, and such member shall be an active or retired Federal judge serving in the District.

(5) Members of the Commission shall serve without compensation for services rendered in connection with their official duties on the Commission.

(c)(1) The Commission shall act only at meetings called by the Chairman or a majority of the Commission held after notice has been given of such meeting to all Commission members. Meetings of the Commission may be closed to the public. Section 1-207.42 shall not apply to meetings of the Commission.

(2) The Commission shall choose annually, from among its members, a Chairman, and such other officers as it may deem necessary. The Commission may adopt such rules of procedures not inconsistent with this chapter as may be necessary to govern the business of the Commission.

(3) The District government shall furnish to the Commission, upon the request of the Commission, such records, information, services, and such other assistance and facilities as may be necessary to enable the Commission properly to perform its function. Information, records, and other materials furnished to or developed by the Commission in the performance of its duties under this section shall be privileged and confidential. Section 552 of title 5, United States Code (known as the Freedom of Information Act), shall not apply to any such materials.

(d)(1) In the event of a vacancy in any position of the judge of a District of Columbia court, the Commission shall, within sixty days following the occurrence of such vacancy, submit to the President, for possible nomination and appointment, a list of three persons for each vacancy. If more than one vacancy exists at one given time, the Commission must submit lists in which no person is named more than once and the President may select more than one nominee from one list. Whenever a vacancy will occur by reason of the expiration of such judge's term of office, the Commission's list of nominees shall be submitted to the President not less than sixty days prior to the occurrence of such vacancy. In the event the President fails to nominate, for Senate confirmation, one of the persons on the list submitted to the President under this section within sixty days after receiving such list, the Commission shall nominate, and with the advice and consent of the Senate, appoint one of those persons to fill the vacancy for which such list was originally submitted to the President.

(2) In the event any person recommended by the Commission to the President requests that the recommendation be withdrawn, dies, or in any other way becomes disqualified to serve as a judge of the District of Columbia courts, the Commission shall promptly recommend to the President one person to replace the person originally recommended.

(3) In no instance shall the Commission recommend any person, who in the event of timely nomination following a recommendation by the Commission, does not meet, upon such nomination, the qualifications specified in § 1-204.33.

(4) Upon submission to the President, the name of any individual recommended under this subsection shall be made public by the Judicial Nomination Commission.

(Dec. 24, 1973, 87 Stat. 796, Pub. L. 93-198, title IV, § 434; Oct. 13, 1977, 91 Stat. 1155, Pub. L. 95-131, § 3(b); Oct. 28, 1986, 100 Stat. 3228, Pub. L. 99-573, §§ 8-10, 15; June 13, 1994, Pub. L. 103-266, §§ 2(b)(9), 2(b)(10), 108 Stat. 713; Sept. 9, 1996, 110 Stat. 2369, Pub. L. 104-194, § 131(a).)

Prior Codifications. — 1981 Ed., Title 11, appx., § 434.

1973 Ed., Title 11, appx., § 434.

Temporary Amendment of Section. — Section 2 of D.C. Law 18-224 amended section 202 of D.C. Law 18-160 to read as follows: “Sec. 202. Applicability. Section 201 shall apply upon its ratification by a majority of the registered qualified electors of the District of Columbia voting in a referendum held for such purpose and a 35-day period of Congressional review as provided in section 303 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 784; D.C. Official Code § 1-

203.03), and publication in the District of Columbia Register.”

Section 5(b) of D.C. Law 18-224 provided that the act shall expire after 225 days of its having taken effect.

Editor’s notes. — Time limit for submission of lists: Section 3 of Public Law 98-235 provided that notwithstanding the time limitations of subsection (d)(1) of this section, the District of Columbia Judicial Nomination Commission shall submit lists for initial nominations and appointments to judicial positions created under the act within 90 days after the date of enactment of the act. Approved March 19, 1984.

Part Ci

ELECTION OF THE ATTORNEY GENERAL.

§ 1-204.35. Election of the Attorney General.

(a) The Attorney General for the District of Columbia shall be elected on a partisan basis by the registered qualified electors of the District. Nothing in this section shall prevent a candidate for the position of Attorney General from belonging to a political party.

(b)(1) If a vacancy in the position of Attorney General occurs as a consequence of resignation, permanent disability, death, or other reason, the Board of Elections and Ethics shall hold a special election in the District on the 1st Tuesday occurring more than 114 days after the date on which the vacancy occurs, unless the Board of Elections and Ethics determines that the vacancy could be more practicably filled in a special election held on the same day as the next general election to be held in the District occurring within 60 days of the date on which a special election would otherwise have been held under the provisions of this paragraph. The person elected Attorney General to fill a vacancy in the Office of the Attorney General shall take office on the day in which the Board of Elections and Ethics certifies his or her election, and shall serve as Attorney General only for the remainder of the term during which the vacancy occurred unless reelected.

(2) When the position of Attorney General becomes vacant, the Chief Deputy Attorney General shall become the Acting Attorney General and shall serve from the date the vacancy occurs until the date on which the Board of Elections and Ethics certifies the election of the new Attorney General at which

time he or she shall again become the Chief Deputy Attorney General. While the Chief Deputy Attorney General is Acting Attorney General, he or she shall receive the compensation regularly paid the Attorney General, and shall receive no compensation as Chief Deputy Attorney General.

(c) The term of office for the Attorney General shall be 4 years and shall begin on noon on January 2nd of the year following his or her election. The term of office of the Attorney General shall coincide with the term of office of the Mayor.

(d) Any candidate for the position of Attorney General shall meet the qualifications of § 1-301.83, prior to the day on which the election for the Attorney General is to be held.

(e) The first election for the position of Attorney General shall be after January 1, 2014.

(Dec. 24, 1973, 87 Stat. 774, Pub. L. 93-198, as added May 28, 2011, D.C. Law 18-160A, § 201(b), 57 DCR 3012; July 18, 2012, 126, Pub. L. 112-145, § 2(c).)

Effect of amendments. — D.C. Law 112-145, in subsec. (b)(1), substituted “the Board of Elections shall hold a special election in the District on the Tuesday occurring at least 70 days and not more than 174 days after the date on which such vacancy occurs which the Board of Elections determines, based on a totality of the circumstances, taking into account, inter alia, cultural and religious holidays and the administrability of the election, will provide the opportunity for the greatest level of voter participation.” for “the Board of Elections and Ethics shall hold a special election in the District on the 1st Tuesday occurring more than 114 days after the date on which the vacancy occurs, unless the Board of Elections and Ethics determines that the vacancy could be more practicably filled in a special election held on the same day as the next general election to be held in the District occurring within 60 days of the date on which a special election would otherwise have been held under the provisions of this paragraph.”

Temporary Amendment of Section. — Section 2 of D.C. Law 18-224 amended section 202 of D.C. Law 18-160 to read as follows: “Sec. 202. Applicability. Section 201 shall apply upon its ratification by a majority of the registered qualified electors of the District of Columbia voting in a referendum held for such purpose and a 35-day period of Congressional review as provided in section 303 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 784; D.C. Official Code § 1-203.03), and publication in the District of Columbia Register.”

Section 5(b) of D.C. Law 18-224 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section 202 of Law

18-160, see § 2 of the Elected Attorney General Referendum Emergency Amendment Act of 2010 (D.C. Act 18-443, June 17, 2010, 57 DCR 5403).

For temporary (90 day) amendment of section 202 of Law 18-160, see § 2 of the Elected Attorney General Referendum Congressional Review Emergency Amendment Act of 2010 (D.C. Act 18-532, August 6, 2010, 57 DCR 8142).

For temporary (90 day) amendment of section 202 of D.C. Law 18-160, see § 204 of Receiving Stolen Property and Public Safety Amendments Emergency Amendment Act of 2011 (D.C. Act 19-261, December 21, 2011, 58 DCR 11232).

For temporary (90 day) amendment of section 202 of D.C. Law 18-160, see § 203 of Receiving Stolen Property and Public Safety Amendments Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-326, March 19, 2012, 59 DCR 2384).

Legislative history of Law 18-160. — Law 18-160, the “Attorney General for the District of Columbia Clarification and Elected Term Amendment Act of 2010”, was introduced in Council and assigned Bill No. 18-65, which was referred to the Committee on Public Safety and the Judiciary. The bill was adopted on first and second readings on January 5, 2010, and February 2, 2010, respectively. Deemed approved without the signature of the Mayor on March 30, 2010, it was assigned Act No. 18-351 and transmitted to both Houses of Congress for its review. D.C. Law 18-160 became effective on May 27, 2010.

Effective date. — D.C. Law 18-160 contained an applicability clause for section 201 of the Act that, after amendment by emergency Act 18-443, temporary Law 18-224, and emergency Act 19-51, stated that section 201 would

become law upon its ratification by a majority of the registered qualified electors of the District of Columbia voting in a referendum and 35 days of congressional review.

D.C. Law 18-160 became effective on May 27, 2010. Section 201 of D.C. Law 18-160 was ratified by the electors of the District of Columbia in a general election held on November 2, 2010, and certified by the District of Columbia Board of Elections and Ethics on November 29, 2010. Section 201 became effective as law on May 30, 2011, following 35 days of congressional review and assigned Law Number 18-160A. Section 201 adds a new section 435 to the District of Columbia Home Rule Act (HRA).

Section 3 of Pub. L. 112-145 provided: "Sec. 3.

Effective Date. The amendments made by section 2 shall apply with respect to vacancies occurring on or after the enactment of this Act."

Editor's notes. — Section 203 of D.C. Law 19-120 amended section 202 of D.C. Law 18-160 to read as follows:

"Sec. 202. Applicability.

"Section 201 shall apply upon its ratification by a majority of the registered qualified electors of the District of Columbia voting in a referendum held for such purpose and a 35-day period of Congressional review as provided in section 303 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 784; D.C. Official Code § 1-203.03), and publication in the District of Columbia Register."

Part D

DISTRICT BUDGET AND FINANCIAL MANAGEMENT.

Subpart 1—Budget and Financial Management.

§ 1-204.41. Fiscal year.

(a) *In general.* — Except as provided in subsection (b) of this section, the fiscal year of the District shall, beginning on October 1, 1976, commence on the first day of October of each year and shall end on the 30th day of September of the succeeding calendar year. Such fiscal year shall also constitute the budget and accounting year.

(b) *Exceptions.* —

(1) *Armory Board.* — The fiscal year for the Armory Board shall begin on the first day of January and shall end on the thirty-first day of December of each calendar year.

(2) *Schools.* — Effective with respect to fiscal year 2007 and each succeeding fiscal year, the fiscal year for the District of Columbia Public Schools (including public charter schools) and the University of the District of Columbia may begin on the first day of July and end on the thirtieth day of June of each calendar year.

(Dec. 24, 1973, 87 Stat. 798, Pub. L. 93-198, title IV, § 441; Aug. 29, 1974, 88 Stat. 793, Pub. L. 93-395, § 1(3); Nov. 15, 1977, 91 Stat. 1383, Pub. L. 95-185, § 1; Oct. 30, 2004, 118 Stat. 2230, Pub. L. 108-386, § 4; Oct. 16, 2006, 120 Stat. 2029, Pub. L. 109-356, § 124.)

Prior Codifications. — 1981 Ed., § 47-101. 1973 Ed., § 47-101.

Effect of amendments. — Pub. L. 108-386, in the first sentence, substituted "(a) In general—Except as provided in subsection (b), the fiscal year" for "The fiscal year"; deleted the third sentence which had read "Such fiscal year shall also constitute the budget and accounting year."; and added subsec. (b).

Pub. L. 109-356, in subsec. (b)(2), substituted "may begin" for "shall begin".

Effective date. — Section 9 of Pub. L. 108-386, 118 Stat. 2228, the 2004 District of Columbia Omnibus Authorization Act, provided: "The amendments made by this section shall take effect on the date of the enactment of this Act Oct. 30, 2004."

Editor's notes. — Temporary Commission

on Financial Oversight of the District of Columbia: Sections 1 to 3 and 5 to 7 of the Act of September 4, 1976, 90 Stat. 1205, Pub. L. 94-399, as amended by the Act of September 26, 1978, 92 Stat. 750, Pub. L. 95-386 and the Act of June 21, 1979, 93 Stat. 75, Pub. L. 96-27, provided for the establishment of the Temporary Commission on Finance Oversight of the District of Columbia for the purpose of improving the financial planning, reporting, and control systems of the District government. 31 U.S.C. § 715 sets up audit of accounts in D.C. on a permanent basis as of 1982 in § 1-207.36.

Enactment upon adoption of federal legislation: Section 4 of D.C. Law 11-254 provided that “§§ 47-101, 47-117, 47-130, 47-301, 47-302, 47-

303, 47-304, 47-304.1, 47-305, 47-310, 47-312, 47-317.1 through 47-317.6, 47-321 through 47-325, 47-327 through 47-331, and 47-332 through 47-334 of Title 47 §§ 1-204.41, 1-204.55, 1-204.50, 1-204.42, 1-204.43, 1-204.44, 1-204.46, 1-204.53, 1-204.47, 1-204.48, 1-204.49, 1-204.24a through 1-204.24e, 47-317.06, 1-204.61 through 1-204.65, 1-204.71 through 1-204.75, 1-204.81, 1-204.85, 1-204.86 and 1-204.90, 2001 Ed. of the District of Columbia Code shall be enacted as part of Title 47 upon the adoption by Congress of legislation so enacting these sections.”

Definitions applicable: The definitions in § 1-201.03 apply to this section.

§ 1-204.42. Submission of annual budget.

(a) At such time as the Council may direct, the Mayor shall prepare and submit to the Council each year, and make available to the public, an annual budget for the District of Columbia government which shall include:

(1) The budget for the forthcoming fiscal year in such detail as the Mayor determines necessary to reflect the actual financial condition of the District government for such fiscal year, and specify the agencies and purposes for which funds are being requested; and which shall be prepared on the assumption that proposed expenditures resulting from financial transactions undertaken on either an obligation or cash outlay basis, for such fiscal year shall not exceed estimated resources from existing sources and proposed resources;

(2) An annual budget message which shall include supporting financial and statistical information on the budget for the forthcoming fiscal year and information on the approved budgets and expenditures for the immediately preceding 3 fiscal years;

(3) A multiyear plan for all agencies of the District government as required under § 1-204.43;

(4) A multiyear capital improvements plan for all agencies of the District government as required under § 1-204.44;

(5) A program performance report comparing actual performance of as many programs as is practicable for the last completed fiscal year against proposed goals for such programs for such year, and, in addition, presenting as many qualitative or quantitative measures of program effectiveness as possible (including results of statistical sampling or other special analyses), and indicating the status of efforts to comply with the reports of the District of Columbia Auditor and the Comptroller General of the United States;

(6) An issue analysis statement consisting of a reasonable number of issues, identified by the Council in its action on the budget in the preceding fiscal year, having significant revenue or budgetary implications, and other similar issues selected by the Mayor, which shall consider the cost and benefits of alternatives and the rationale behind action recommended or adopted; and

(7) A summary of the budget for the forthcoming fiscal year designed for distribution to the general public.

(b) The budget prepared and submitted by the Mayor shall include, but not be limited to, recommended expenditures at a reasonable level for the forthcoming fiscal year for the Council, the District of Columbia Auditor, the District of Columbia Board of Elections and Ethics, the District of Columbia Judicial Nomination Commission, the Zoning Commission of the District of Columbia, the Public Service Commission, the Armory Board, the Commission on Judicial Disabilities and Tenure, and the District of Columbia Water and Sewer Authority.

(c) The Mayor from time to time may prepare and submit to the Council such proposed supplemental or deficiency budget recommendations as in his judgment are necessary on account of laws enacted after transmission of the budget or are otherwise in the public interest. The Mayor shall submit with such proposals a statement of justifications, including reasons for their omission from the annual budget. Whenever such proposed supplemental or deficiency budget recommendations are in an amount which would result in expenditures in excess of estimated resources, the Mayor shall make such recommendations as are necessary to increase resources to meet such increased expenditures.

(d) The Mayor shall prepare and submit to the Council a proposed supplemental or deficiency budget recommendation under subsection (c) of this section if the Council by resolution requests the Mayor to submit such a recommendation.

(Dec. 24, 1973, 87 Stat. 798, Pub. L. 93-198, title IV, § 442; Aug. 14, 1974, 88 Stat. 458, Pub. L. 93-376, title III, § 306(a); Apr. 17, 1995, 109 Stat. 142, Pub. L. 104-8, § 301(c); Aug. 6, 1996, 110 Stat. 1698, Pub. L. 104-184, § 4(c).)

Cross references. — Board of education, annual report and budget revision, see § 38-154.

D.C. retirement board, budget preparation, see § 1-711.

District government, financial plan and annual District budget, process for submission and approval, see § 47-392.02.

Financing of retirement benefits, calculation of District payment, see § 1-907.03.

Financing of retirement benefits, federal and district payments, determination, certification, see § 1-722.

Fund accounting, duties of Mayor, see § 47-375.

Public parking authority, budget submission, see § 50-2511.

Sports and entertainment commission, public or private bond sale, budget submission, see § 3-1413.

University of the District of Columbia, budget, see § 38-1202.06.

Section references. — This section is referred to in §§ 1-204.52, 1-325.11, 2-1219.13, 2-1219.38, 3-1410, 34-1253.02, and 47-318.01.

Prior Codifications. — 1981 Ed., § 47-301. 1973 Ed., § 47-221.

Temporary Addition of Section. — Sec-

tions 2 and 3 of D.C. Law 18-157 added sections to read as follows:

“Sec. 2. The Mayor shall submit a budget gap-closing plan for the District government for the current fiscal year to the Council not later than February 10, 2010. The Mayor shall make the plan available to the public.

“Sec. 3. The Mayor shall submit to the Council by the 10th of each month a report, which is certified by the Office of the Chief Financial Officer, on the progress for controlling overspending in fiscal year 2010. The Mayor shall make the reports available to the public.”

Section 5(b) of D.C. Law 18-157 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90-day) amendment of section, see § 3102 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see § 3102 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

For temporary (90 day) provisions on limits on local spending increases, see § 4002 of Fis-

cal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

For temporary (90 day) submission of the budget with local spending increase limitations, see § 1202 of the Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) submission of the budget with local spending increase limitations, see § 1202 of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

For temporary (90 day) Department of Employment Services budget and FTE authority provisions, see § 1092 of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) Department of Employment Services budget and FTE authority provisions, see § 1092 of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

For temporary (90 day) amendment of section, see §§ 2, 3 of Fiscal Year 2010 Balanced Budget and Spending Pressure Control Plan Emergency Act of 2009 (D.C. Act 18-322, March 2, 2010, 57 DCR 1847).

Legislative history of Law 15-39. — Law 15-39, the “Fiscal Year 2004 Budget Support Act of 2003”, was introduced in Council and assigned Bill No. 15-218, which was referred to Committee on Whole. The Bill was adopted on first and second readings on May 6, 2003, and June 3, 2003, respectively. Signed by the Mayor on June 20, 2003, it was assigned Act No. 15-106 and transmitted to both Houses of Congress for its review. D.C. Law 15-39 became effective on November 13, 2003.

Legislative history of Law 15-205. — Law 15-205, the “Fiscal Year 2005 Budget Support Act of 2004”, was introduced in Council and assigned Bill No. 15-768, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 14, 2004, and June 29, 2004, respectively. Signed by the Mayor on August 2, 2004, it was assigned Act No. 15-487 and transmitted to both Houses of Congress for its review. D.C. Law 15-205 became effective on December 7, 2004.

Short title. — Short title of title XLI of Law 14-190: Section 4101 of D.C. Law 14-190 provided that title XLI of the act may be cited as the Fiscal Year 2004 Budget Submission Amendment Act of 2002.

Short title of subtitle I of title I of Law 15-205: Section 1091 of D.C. Law 15-205 provided that subtitle I of title I of the act may be cited as the Department of Employment Services Budget and FTE Authority Act of 2004.

Submission date for budget request for fiscal year 1992: Pursuant to Resolution 8-312, the “Submission Date for the Fiscal Year 1992 Budget Approval Resolution of 1990,” effective December 21, 1990, the Council established the date by which the Mayor shall submit to the Council the proposed budget for the government of the District of Columbia for the fiscal year ending September 30, 1992, and identified information and documentation to be submitted to the Council with the proposed budget for the government of the District of Columbia for the fiscal year ending September 30, 1992.

Resolution.— Submission Date for the Fiscal Year 1993 Budget Approval Resolution of 1991: Pursuant to Resolution 9-151, effective December 27, 1991, the Council established the date by which the Mayor shall submit to the Council the proposed budget for the government of the District of Columbia for the fiscal year ending September 30, 1993, and to identify information and documentation to be submitted to the Council with the proposed budget for the government of the District of Columbia for the fiscal year ending September 30, 1993.

Submission Date for the Fiscal Year 1995 Budget Approval Resolution of 1993: Pursuant to Resolution 10-206, effective December 24, 1993, the Council established the date by which the Mayor shall submit to the Council the proposed budget for the government of the District of Columbia for the fiscal year ending September 30, 1995, and to identify information and documentation to be submitted to the Council with the proposed budget for the government of the District of Columbia for the fiscal year ending September 30, 1995.

Fiscal Year 1996 Budget Submission Date Extension Emergency Resolution of 1995: Pursuant to Resolution 11-16, effective February 7, 1995, the Council extended, on an emergency basis, the date of submission by the Mayor of the Fiscal Year 1996 budget to the Council.

Mayor's Orders. — Amendment of Mayor's Order 83-19 January 3, 1983, Establishment of Office of Financial Management: See Mayor's Order 88-13, January 22, 1988.

Agency Budget and Resource Utilization Advisory Committees established: See Mayor's Order 88-239, October 26, 1988.

Establishment of Mayor's Advisory Committee on Resources and Budget: See Mayor's Order 89-207, September 12, 1989.

Establishment of District of Columbia Commission on Budget and Financial Priorities: See Mayor's Order 89-224, October 5, 1989.

Amendment of Mayor's Order 89-224: Establishment—D.C. Commission on Budget and Financial Priorities: See Mayor's Order 90-198, December 13, 1990.

Editor's notes. — Enactment upon adoption of federal legislation: Section 4 of D.C. Law 11-254 provided that “§§ 47-101, 47-117, 47-

130, 47-301, 47-302, 47-303, 47-304, 47-304.1, 47-305, 47-310, 47-312, 47-317.1 through 47-317.6, 47-321 through 47-325, 47-327 through 47-331, and 47-332 through 47-334 of Title 47 §§ 1-204.41, 1-204.55, 1-204.50, 1-204.42, 1-204.43, 1-204.44, 1-204.46, 1-204.53, 1-204.47, 1-204.48, 1-204.49, 1-204.24a through 1-204.24e, 47-317.06, 1-204.61 through 1-204.65, 1-204.71 through 1-204.75, 1-204.81, 1-204.85, 1-204.86 and 1-204.90, 2001 Ed. of the District of Columbia Code shall be enacted as part of Title 47 upon the adoption by Congress of legislation so enacting these sections."

Section 3102 of D.C. Law 13-172 amended Section 2102 of the Service Improvement and Fiscal Year 2000 Budget Support Act of 1999 to read as follows:

"In submitting fiscal year budgets to the Council for fiscal years beginning with fiscal year 2001, there should be a guide for calculating the increase in annual expenditures of local funds. This guide should be an increase of no more than 3% over the prior fiscal year's expenditures of local funds."

Definitions applicable: The definitions in § 1-202 apply to this subchapter.

Section 4102 of D.C. Law 14-190 provided: "Sec. 4102. Limit on increase in spending." For fiscal year 2004 the Mayor shall not submit a budget to the Council that increases spending by more than 4% of the fiscal year 2003 budget approved by the Council."

Section 1202 of D.C. Law 15-39 provided:

"(a) For fiscal year 2005, the Mayor shall submit a budget to the Council that increases local funds spending by no more than 3.5% of the fiscal year 2004 budget approved by the Council. Any spending transferred from local funds in fiscal year 2004 to non-local funds in Fiscal year 2005 shall be included in any calculation to determine whether the proposed spending for fiscal year 2005 is more than 3.5% greater than local spending in fiscal year 2004.

"(b) By July 1, 2003, the Chief Financial Officer and the Mayor shall identify by contract or subagency, the areas where contract savings identified by the Fiscal Year 2004 Budget Request Act, passed on May 6, 2003 (Enrolled version of Bill 15-214) shall occur and submit the information to Council.

"(c) The budget submission pursuant to subsection (a) of this section shall provide that not less than ½ of the personnel costs for Public Safety Communications Center services in fiscal year 2004 shall instead be paid by local funds in fiscal year 2005."

Section 1092 of D.C. Law 15-205 provided:

"For fiscal year 2005, the Department of Employment Services ('DOES') shall have:

"(1) No more than 513 full time equivalent ('FTE') employees; and

"(2) A total budget of \$88,846,102, to be allocated as follows:

"(A)(i) Personal services budget not to exceed \$32,314,000;

"(ii) Nonpersonal services budget not to exceed \$56,532,000, including not less than \$29,965,000 for Subsidies and Transfers;

"(B) From the funds identified herein, no less than \$764,000 shall be made available for the Office of Apprenticeship and Information Training; and

"(C) From the funds identified herein, no more than \$686,000 shall be made available for security costs.

"(b) The budget allocations set forth in paragraph (2)(A) of subsection (a) shall apply to budgeted funds only and exclude any additional grant funds or special purpose funds not included in the fiscal year 2005 budget. The allocations are subject to the following adjustments if there are grant fund or special purpose fund budget modifications approved by the Council: 36% of any budget modifications shall be allocated to personal services and 64% shall be allocated to nonpersonal services."

Deadline for submission of revised revenue estimate: Section 124 of Pub. L. 102-382, 106 Stat. 1433, the District of Columbia Appropriations Act, 1993, provided that no later than 30 days after the end of the first quarter of the fiscal year ending September 30, 1993, the Mayor of the District of Columbia shall submit to the Council of the District of Columbia the new fiscal year 1993 revenue estimates as of the end of the first quarter of fiscal year 1993. These estimates shall be used in the budget request for the fiscal year ending September 30, 1994. The officially revised estimates at mid-year shall be used for the midyear report.

CASE NOTES

In general.

By-pass approach permitting allocation of revenues for specific purposes by initiative, but requiring further legislative action in order to appropriate those revenues, is deficient as applied to District of Columbia in which allocation and appropriation functions are divided between Congress and District of Columbia Council. D.C. Code 1981, §§ 1-201(a), 1-227,

1-227(e), 1-229(a), 47-301, 47-301(a)(1, 3-6), 47-313(c, d), 47-304, 47-305, 47-3405. *Hessey v. District of Columbia Bd. of Elections & Ethics*, 601 A.2d 3, 1991 D.C. App. LEXIS 318 (1991).

Neither the Self-Government Act, applicable provisions of the federal Anti-Deficiency Act, nor the 1990 District of Columbia Appropriations Act gave mayor the authority to unilaterally reduce the fiscal year appropriation for the

Board of Education. D.C. Code 1981, §§ 47-301, 47-310, 47-312(2), 47-313(c, d); 31 U.S.C. § 1341(a)(1)(A); District of Columbia Appropriations Act, 1990, 103 Stat. 1267. *Barry v. Bush*, 581 A.2d 308, 1990 D.C. App. LEXIS 255 (1990).

Mayor was authorized to reduce funds allocated to District of Columbia public library in budget enacted by District's Council and in Appropriations Act enacted by Congress, in attempting to balance District's budget, despite library's status as statutory independent agency; mayor had statutory duty to balance

budget regardless of sums previously appropriated, classification of library as statutory independent agency did not make library independent of mayor's fiscal authority, and neither Council's budget nor Appropriations Act contained any language requiring that reductions be made only in funding of agencies under mayor's control. D.C. Code 1981, §§ 1-299.6, 1-1502(5), 37-101, 37-106, 47-301(a)(1), 47-310(a)(9), 47-313(d); District of Columbia Appropriations Act, 1990, § 103, 103 Stat. 1267. *Hazel v. Barry*, 580 A.2d 110, 1990 D.C. App. LEXIS 226 (1990).

§ 1-204.43. Multiyear plan.

The Mayor shall prepare and include in the annual budget a multiyear plan for all agencies included in the District budget, for all sources of funding, and for such program categories as the Mayor identifies. Such plan shall be based on the actual experience of the immediately preceding 3 fiscal years, on the approved current fiscal year budget, and on estimates for at least the 4 succeeding fiscal years. The plan shall include, but not be limited to, provisions identifying:

(1) Future cost implications of maintaining programs at currently authorized levels, including anticipated changes in wage, salary, and benefit levels;

(2) Future cost implications of all capital projects for which funds have already been authorized, including identification of the amount of already appropriated but unexpended capital project funds;

(3) Future cost implications of new, improved, or expanded programs and capital project commitments proposed for each of the succeeding 4 fiscal years;

(4) The effects of current and proposed capital projects on future operating budget requirements;

(5) Revenues and funds likely to be available from existing revenue sources at current rates or levels;

(6) The specific revenue and tax measures recommended for the forthcoming fiscal year and for the next following fiscal year necessary to balance revenues and expenditures;

(7) The actuarial status and anticipated costs and revenues of retirement systems covering District employees; and

(8) Total debt service payments in each fiscal year in which debt service payments must be made for all bonds which have been or will be issued, and all loans from the United States Treasury which have been or will be received, to finance the total cost on a full funding basis of all projects listed in the capital improvements plan prepared under § 1-204.44; and for each such fiscal year, the percentage relationship of the total debt service payments (with payments for issued and proposed bonds and loans from the United States Treasury, received or proposed, separately identified) to the bonding limitation for the current and forthcoming fiscal year as specified in § 1-206.03(b).

(Dec. 24, 1973, 87 Stat. 799, Pub. L. 93-198, title IV, § 443.)

Cross references. — District government, financial plan and budget, special rules for fiscal year 1996, see § 47-392.08.

Section references. — This section is referred to in §§ 1-204.42, 47-318, and 47-318.01.

Prior Codifications. — 1981 Ed., § 47-302. 1973 Ed., § 47-222.

Emergency legislation. — For temporary (90-day) authorization of multiyear budget plan, see §§ 4402 through 4408 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see §§ 4402 to 4408 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

For temporary (90 day) authorization of multiyear budget plan, see §§ 4002 to 4007 of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

Mayor's Orders. — Establishment of District of Columbia Commission on Budget and Financial Priorities: See Mayor's Order 89-224, October 5, 1989.

Amendment of Mayor's Order 89-224: Establishment — D.C. Commission on Budget and Financial Priorities: See Mayor's Order 90-198, December 13, 1990.

Editor's notes. — Deadline for submission of revised revenue estimate: Section 124 of Pub. L. 102-382, 106 Stat. 1433, the District of Columbia Appropriations Act, 1993, provided that no later than 30 days after the end of the first quarter of the fiscal year ending September 30, 1993, the Mayor of the District of Columbia shall submit to the Council of the District of Columbia the new fiscal year 1993 revenue estimates as of the end of the first quarter of fiscal year 1993. These estimates shall be used in the budget request for the fiscal year ending September 30, 1994. The officially revised estimates at midyear shall be used for the midyear report.

Submission date for budget request for fiscal year 1992: Pursuant to Resolution 8-312, the "Submission Date for the Fiscal Year 1992 Budget Approval Resolution of 1990," effective December 21, 1990, the Council established the date by which the Mayor shall submit to the Council the proposed budget for the government of the District of Columbia for the fiscal year ending September 30, 1992, and identified information and documentation to be submitted to the Council with the proposed budget for the government of the District of Columbia for the fiscal year ending September 30, 1992.

Enactment upon adoption of federal legislation: Section 4 of D.C. Law 11-254 provided that "§§ 47-101, 47-117, 47-130, 47-301, 47-302, 47-303, 47-304, 47-304.1, 47-305, 47-310, 47-312,

47-317.1 through 47-317.6, 47-321 through 47-325, 47-327 through 47-331, and 47-332 through 47-334 of Title 47 [§§ 1-204.41, 1-204.55, 1-204.50, 1-204.42, 1-204.43, 1-204.44, 1-204.46, 1-204.53, 1-204.47, 1-204.48, 1-204.49, 1-204.24a through 1-204.24e, 47-317.06, 1-204.61 through 1-204.65, 1-204.71 through 1-204.75, 1-204.81, 1-204.85, 1-204.86 and 1-204.90, 2001 Ed.] of the District of Columbia Code shall be enacted as part of Title 47 upon the adoption by Congress of legislation so enacting these sections."

Multiyear budget plans: Sections 4402 to 4407 of D.C. Law 14-28 provided:

"Sec. 4402. No later than September 30, 2001, the following agencies and agencies responsible for the following programs, shall submit to the Council of the District of Columbia and to the Chief Financial Officer a multiyear financial plan as required by this title:

'(1) Risk Management programs administered by the Mayor;

'(2) Department of Mental Health; and

'(3) Settlements and Judgments Fund administered by the Corporation Counsel.

"Sec. 4403. The multiyear financial plan required by this title shall detail the projected cost of services for that agency or program for fiscal years 2002 through 2005, and shall be based on a performance plan for the same fiscal years. The multiyear financial plan shall specify reasonable assumptions for inflation, personal service levels, and wage increases, and identify all budgetary assumptions being used. The multiyear financial plan shall calculate and specify the cost per fiscal year to achieve the objectives and goals set forth in the performance plan.

"Sec. 4404. (a) For the purposes of this title, "performance plan" is a detailed statement that includes:

'(1) A mission statement — a broad statement of central purpose;

'(2) Objectives — less broad statements of desired outcomes resulting from accomplishing the mission; and

'(3) Goals — target levels of performance expressed in tangible, measurable terms, against which actual achievement of objectives can be compared; a goal may be expressed as a population target, or as a quantitative standard, value, or rate.

'(b) The performance plan shall describe the strategy for how the mission (including its objectives and goals) will be accomplished. This description of strategy shall include all of the functions, activities, operations, and projects required for effective implementation of the performance plan. There shall be one or more measures of performance, that address both quantity and quality, for each goal. The performance plan shall state measurable or objective performance goals and objectives for all signif-

icant activities of the agency or program. The plan shall identify (describe and quantify) the classes of persons to be served and how (qualitatively and quantitatively) those classes will change as a result of the mission, objectives, and goals.

'(c) The performance plan shall also provide national norms, industry standards, typical benchmarks, performance measures from other cities, or other relevant comparative data.

'(d) An agency which prepared a performance plan pursuant to Title XLIV of the Fiscal Year 2001 Budget Support Act of 2000, effective October 19, 2000 (D.C. Law 13-172; 47 DCR 6308), in the previous fiscal year shall also provide an analysis of the agency's performance vis-a-vis its performance plan.

'Sec. 4405. The multiyear financial plan shall include all funds, including local and federal funds.

'Sec. 4406. For each of the agencies specified in section 4402, the performance plan shall detail how the agency or program will provide improved service delivery that:

'(1) Fulfills its mission (including objectives and goals);

'(2) Reduces expenditures, especially from local funds; and

'(3) Creates operational efficiencies to accomplish this.

'Sec. 4407. The Chief Financial Officer shall have the authority to require greater specificity in the multiyear plan prior to submission, and to work with agencies to improve their submission."

Establishment of Mayor's Advisory Committee on Resources and Budget: See Mayor's Order 89-207, September 12, 1989.

§ 1-204.44. Multiyear capital improvements plan.

The Mayor shall prepare and include in the annual budget a multiyear capital improvements plan for all agencies of the District which shall be based upon the approved current fiscal year budget and shall include:

(1) The status, estimated period of usefulness, and total cost of each capital project on a full funding basis for which any appropriation is requested or any expenditure will be made in the forthcoming fiscal year and at least 4 fiscal years thereafter, including an explanation of change in total cost in excess of 5% for any capital project included in the plan of the previous fiscal year;

(2) An analysis of the plan, including its relationship to other programs, proposals, or elements developed by the Mayor as the central planning agency for the District pursuant to § 1-204.23;

(3) Identification of the years and amounts in which bonds would have to be issued, loans made, and costs actually incurred on each capital project identified; and

(4) Appropriate maps or other graphics.

(Dec. 24, 1973, 87 Stat. 800, Pub. L. 93-198, title IV, § 444.)

Cross references. — National capital planning commission, public works program, Mayor's submission of multi-year capital improvements plan, see § 2-1005.

Section references. — This section is referred to in §§ 1-204.42, 1-204.43, 47-318, and 47-336.

Prior Codifications. — 1981 Ed., § 47-303. 1973 Ed., § 47-223.

Mayor's Orders. — Capital Program Coordinating Office established: See Mayor's Order 84-87, May 16, 1984.

Editor's notes. — Annual plan for capital outlay borrowing from United States Treasury: Section 118 of Pub. L. 101-168, the District of

Columbia Appropriations Act, 1990, provided that at the start of the fiscal year, the Mayor shall develop an annual plan, by quarter and by project, for capital outlay borrowings and provided, that within a reasonable time after the close of each quarter, the Mayor shall report to the Council of the District of Columbia and the Congress the actual borrowing and spending progress compared with projections.

Approval by Council required prior to capital borrowing: Section 119 of Pub. L. 101-168, the District of Columbia Appropriations Act, 1990, provided that the Mayor shall not borrow any funds for capital projects unless he has obtained prior approval from the Council of the

District of Columbia, by resolution, identifying the projects and amounts to be financed with such borrowings.

General obligation bonds authorized: D.C. Law 5-115, effective September 26, 1984, authorized the issuance of general obligation bonds of the District of Columbia for the purpose of financing certain capital projects and refunding certain capital indebtedness of the District of Columbia.

D.C. Law 6-60, effective November 19, 1985, authorized the issuance of general obligation bonds of the District of Columbia for the purpose of financing certain capital projects and refunding certain capital indebtedness of the District of Columbia.

Capital projects funds borrowing authority resolution: Pursuant to Resolution 5-719, the "Capital Projects Funds Borrowing Authorization Resolution of 1984," effective June 12, 1984, the Council approved the request of the Mayor for authority to borrow funds for capital projects.

Issuance of general obligation bonds authorized: Pursuant to Resolution 6-714, the "General Obligation Bonds Issuance Authorization Resolution of 1986," effective June 17, 1986, the Council authorized the issuance of general obligation bonds for capital projects.

Pursuant to Resolution 7-96, the "General Obligation Bonds Issuance Authorization Resolution of 1987," effective July 14, 1987, the Council authorized the issuance of general obligation bonds for capital projects.

Pursuant to Resolution 8-33, the "General Obligation Bond Issuance Approval Resolution of 1989", effective April 18, 1989, the Council approved the borrowing of funds by the Mayor through the issuance and sale of general obligation bonds.

Pursuant to Resolution 8-246, the "General Obligation Bond Issuance 1990B Authorization Resolution of 1990," effective July 27, 1990, the Council approved the borrowing of funds by the Mayor through the issuance and sale of general obligation bonds.

Submission date for budget request for fiscal year 1992: Pursuant to Resolution 8-312, the "Submission Date for the Fiscal Year 1992 Budget Approval Resolution of 1990," effective

December 21, 1990, the Council established the date by which the Mayor shall submit to the Council the proposed budget for the government of the District of Columbia for the fiscal year ending September 30, 1992, and identified information and documentation to be submitted to the Council with the proposed budget for the government of the District of Columbia for the fiscal year ending September 30, 1992.

General Obligation Bond Issuance 1991A Authorization Resolution of 1991: Pursuant to Resolution 9-39, effective May 24, 1991, the Council approved the borrowing of funds by the Mayor through the issuance and sale of general obligation bonds.

General Obligation Bond Issuance Approval Resolution of 1993: Pursuant to Resolution 10-49, effective June 11, 1993, the Council conditionally approved the borrowing of funds by the Mayor through the issuance and sale of general obligation bonds.

General Obligation Bond Issuance Conditional Approval Resolution of 1994: Pursuant to Resolution 10-392, effective June 21, 1994, the Council conditionally approved the borrowing of funds by the Mayor through the issuance and sale of general obligation bonds.

General Obligation Bond 1996 Issuance Authorization Emergency Resolution of 1996: Pursuant to Resolution 11-545, effective October 1, 1996, the Council approved, on an emergency basis, authorization for the borrowing of funds by the Mayor through the issuance and sale of general obligation bonds.

Enactment upon adoption of federal legislation: Section 4 of D.C. Law 11-254 provided that "§§ 47-101, 47-117, 47-130, 47-301, 47-302, 47-303, 47-304, 47-304.1, 47-305, 47-310, 47-312, 47-317.1 through 47-317.6, 47-321 through 47-325, 47-327 through 47-331, and 47-332 through 47-334 of Title 47 §§ 1-204.41, 1-204.55, 1-204.50, 1-204.42, 1-204.43, 1-204.44, 1-204.46, 1-204.53, 1-204.47, 1-204.48, 1-204.49, 1-204.24a through 1-204.24e, 47-317.06, 1-204.61 through 1-204.65, 1-204.71 through 1-204.75, 1-204.81, 1-204.85, 1-204.86 and 1-204.90, 2001 Ed. of the District of Columbia Code shall be enacted as part of Title 47 upon the adoption by Congress of legislation so enacting these sections."

§ 1-204.45. District of Columbia courts' budget.

The District of Columbia courts shall prepare and annually submit to the Director of the Office of Management and Budget, for inclusion in the annual budget, annual estimates of the expenditures and appropriations necessary for the maintenance and operation of the District of Columbia court system. The courts shall submit as part of their budgets both a multiyear plan and a multiyear capital improvements plan and shall submit a statement presenting

qualitative and quantitative descriptions of court activities and the status of efforts to comply with reports of the Comptroller General of the United States.

(Dec. 24, 1973, 87 Stat. 800, Pub. L. 93-198, title IV, § 445; Aug. 5, 1977, 111 Stat. 753, Pub. L. 105-33, § 11243(a).)

Prior Codifications. — 1981 Ed., Title 11, appx., § 445. 1973 Ed., Title 11, appx.

§ 1-204.45a. Water and Sewer Authority budget.

(a) *In general.* — The District of Columbia Water and Sewer Authority established pursuant to Chapter 22 of Title 34 shall prepare and annually submit to the Mayor, for inclusion in the annual budget, annual estimates of the expenditures and appropriations necessary for the operation of the Authority for the year. All such estimates shall be forwarded by the Mayor to the Council for its action pursuant to §§ 1-204.46 and 1-206.03(c), without revision but subject to his recommendations. Notwithstanding any other provision of this chapter, the Council may comment or make recommendations concerning such annual estimates, but shall have no authority under this chapter to revise such estimates.

(b) *Permitting expenditure of excess revenues for capital projects in excess of budget.* — Notwithstanding the amount appropriated for the District of Columbia Water and Sewer Authority for capital projects for a fiscal year, if the revenues of the Authority for the year exceed the estimated revenues of the Authority provided in the annual budget of the District of Columbia for the fiscal year, the Authority may obligate or expend an additional amount for capital projects during the year equal to the amount of such excess revenues.

(Dec. 24, 1973, 87 Stat. 800, Pub. L. 93-198, title IV, § 445a, as added Aug. 6, 1996, 110 Stat. 1698, Pub. L. 104-184, § 4(a); Aug. 5, 1997, 111 Stat. 784, Pub. L. 105-033, § 11714(a).)

Prior Codifications. — 1981 Ed., § 43-1691.

Effective date. — Section 11714(c) of Pub. L. 105-33 provided that the amendments made by this section shall apply with respect to fiscal years beginning on or after October 1, 1996.

Section 11717(b) of Title XI of Pub. L. 105-33,

111 Stat. 786 provided that any reference in law or regulation to the “District of Columbia Self-Government and Governmental Reorganization Act” shall be deemed to be a reference to the “District of Columbia Home Rule Act,” which is set out in Volume 1.

§ 1-204.46. Enactment of appropriations by Congress.

The Council, within 56 calendar days after receipt of the budget proposal from the Mayor, and after public hearing, shall by act adopt the annual budget for the District of Columbia government. Any supplements thereto shall also be adopted by act by the Council after public hearing. Such budget so adopted shall be submitted by the Mayor to the President for transmission by him to the Congress. Except as provided in §§ 1-204.45a(b), 1-204.46a, 1-204.46b, 1-204.67(d), 1-204.71(c), 1-204.72(d)(2), 1-204.75(e)(2), 1-204.83(d), and 1-204.90(f), (g), (h)(3), and (i)(3), no amount may be obligated or expended by any officer or employee of the District of Columbia government unless such

amount has been approved by Act of Congress, and then only according to such Act. Notwithstanding any other provision of this chapter, the Mayor shall not transmit any annual budget or amendments or supplements thereto, to the President of the United States until the completion of the budget procedures contained in this chapter. After the adoption of the annual budget for a fiscal year (beginning with the annual budget for fiscal year 1995), no reprogramming of amounts in the budget may occur unless the Mayor submits to the Council a request for such reprogramming and the Council approves the request, but only if any additional expenditures provided under such request for an activity are offset by reductions in expenditures for another activity.

(Dec. 24, 1973, 87 Stat. 801, Pub. L. 93-198, title IV, § 446; Dec. 23, 1981, 95 Stat. 1493, Pub. L. 97-105, § 2; Apr. 17, 1995, 109 Stat. 142, Pub. L. 104-8, § 301(b)(1); Aug. 6, 1996, 110 Stat. 1696, Pub. L. 104-184, § 2(c)(2); Aug. 5, 1997, 111 Stat. 777, Pub. L. 105-33, §§ 11509, 11714(b); Nov. 22, 2000, 114 Stat. 2440, Pub. L. 106-522, § 160(a)(2); Oct. 30, 2004, 118 Stat. 2230, Pub. L. 108-386, § 5; Oct. 16, 2006, 120 Stat. 2021, 2028, 2041, Pub. L. 109-356, §§ 101(b), 121(a), 305(b).)

Cross references. — Borrowing, bond anticipation notes, see § 1-204.75.

Borrowing, payment of bonds and notes, see § 1-204.83.

Borrowing, revenue bonds and other obligations, see § 1-204.90.

Council, legislative procedures, see § 1-204.12.

Council, powers and duties, see § 1-204.04.

District convention center and sports arena authorization, appropriation necessary for arena preconstruction activities, see § 47-398.03.

District convention center and sports arena authorization, expenditure of revenues for activities, see § 47-396.01.

Elections, initiatives and referenda, see § 1-1001.16.

Financial plan and budget, process for submission and approval, see § 47-392.02.

Financial plan and budget, special rules for fiscal year 1996, see § 47-392.08.

Financial responsibility and management assistance authority, duties during year other than control year, see § 47-392.21.

Financing of retirement benefits, calculation of District payment to funds, see § 1-907.03.

Financing of retirement benefits, federal and District payments, determination, certification, see § 1-722.

Prison system, transfer to federal authority, expenditure of funds to carry out certain sewage agreements, see § 24-106.

Procurement organization, office of the inspector general, powers and duties, reports, see § 2-302.08.

Public school funding, hearings, see § 38-917.

Self-government, initiatives and referenda, procedure, see § 1-204.102.

Water and sewer authority, budget, see § 1-204.45a.

Section references. — This section is referred to in §§ 1-204.67, 1-204.71, 1-204.72, 7-2332, 7-3004, and 47-317.03a.

Prior Codifications. — 1981 Ed., § 47-304. 1973 Ed., § 47-224.

Effect of amendments. — Section 160(a)(2) of Public Law 106-522 inserted a reference to subsec. (i) (3) in § 1-204.90.

Pub. L. 108-386, substituted “56” for “50”.

Pub. L. 109-356 made a technical correction to Pub. L. 108-386 by substituting “The Council, within 56 calendar days after receipt of the budget proposal from the Mayor,” for “The Council, within 50 calendar days after receipt of the budget proposal from the Mayor,” in the first sentence; and, in the second sentence, inserted references to §§ 1-204.46a and 1-204.46b.

Emergency legislation. — For temporary provisions for the auction of excess police vehicles purchased for the Metropolitan Police Department, see § 1102 of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), § 1102 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669), and § 1102 of the Fiscal year 1999 Budget Support Congressional Review Emergency Act of 1999 (D.C. Act 13-41, March 31, 1999, 46 DCR

Legislative history of Law 14-307. — Law 14-307, the “Fiscal Year 2003 Budget Support Amendment Act of 2002”, was introduced in

Council and assigned Bill No. 14-892, which was referred to the Committee on the Whole. The Bill was adopted on first and second readings on October 1, 2002, and November 7, 2002, respectively. Signed by the Mayor on December 4, 2002, it was assigned Act No. 14-543 and transmitted to both Houses of Congress for its review. D.C. Law 14-307 became effective on June 5, 2003.

Legislative history of Law 15-39. — For Law 15-39, see notes following § 1-204.42.

Legislative history of Law 15-205. — For Law 15-205, see notes following § 1-204.42.

Short title. — Short title of title XXXIII of Law 14-190: Section 3301 of D.C. Law 14-190 provided that title XXXIII of the act may be cited as the Criteria for Spending Pay-As-You-Go Funding Act of 2002.

Short title of title XXII of Law 15-39: Section 2201 of D.C. Law 15-39 provided that title XXII of the act may be cited as the Metropolitan Police Department Program-Based Budget Act of 2003.

Short title of title XXV of Law 15-39: Section 2501 of D.C. Law 15-39 provided that title XXV of the act may be cited as the Criteria for Spending Pay-As-You-Go Funding Act of 2003.

Short title of title XXVIII of Law 15-39: Section 2801 of D.C. Law 15-39 provided that title XXVIII of the act may be cited as the Department of Employment Services Budget and FTE Authority Act of 2003.

Short title of title XXIX of Law 15-39: Section 2901 of D.C. Law 15-39 provided that title XXIX of the act may be cited as the Contracts Savings Act of 2003.

Short title of title XXXI of Law 15-39: Section 3101 of D.C. Law 15-39 provided that title XXXI of the act may be cited as the Gales School Renovation Approval Act of 2003.

Short title of subtitle A of title I of Law 15-205: Section 1001 of D.C. Law 15-205 provided that subtitle A of title I of the act may be cited as the Criteria for Spending Pay-As-You-Go Funding Act of 2004.

Short title of subtitle C of title I of Law 16-33: Section 1010 of D.C. Law 16-33 provided that subtitle C of title I of the act may be cited as the Criteria for Spending Pay-As-You-Go Contingency Funding Act of 2005.

Effective date. — Section 9 of Pub. L. 108-386, 118 Stat. 2228, the 2004 District of Columbia Omnibus Authorization Act, provided: "The amendments made by this section shall take effect on the date of the enactment of this Act."

Section 121(b) of Pub. L. 109-356 provided that the amendment made by subsection (a) shall take effect as if included in the enactment of the 2004 District of Columbia Omnibus Authorization Act [Pub. L. 108-386].

Editor's notes. — Auction of Excess Police Vehicles Act of 1998: Pursuant to § 1502 of D.C. Law 12-175, for Fiscal Years 1998 and

1999 only, police vehicles purchased for the Metropolitan Police Department which have been declared excess, either through age or mechanical faults, shall be auctioned or otherwise disposed of by the Department, with revenue generated being used expressly for the purchase of replacement vehicles, including motorcycles.

Section 1504 of D.C. Law 12-175 provided that § 1502 shall apply as of October 1, 1998.

Section 4702 of D.C. Law 13-172 provided:

"Of the freed-up appropriated funds in FY 2001 from the reserve rollover as set forth in the FY 2001 Budget Request Act:

"(1) The first \$32,000,000 shall be used to provide, in the following order, \$6,300,000 to the La Shawn Receivership, \$13,000,000 to the Commission on Mental Health, \$12,079,000 to the District of Columbia Public Schools, and \$621,000 to the Office of the Mayor, if the Chief Financial Officer certifies that the first \$32,000,000 is not required to replace funds expended in Fiscal Year 2000 from the Reserve established by section 202(i) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, Pub. Law 104-8;

"(2) The next \$37,000,000 shall be used to provide \$37,000,000 to Management Savings to the extent, if any, the Chief Financial Officer determines the Management Savings is not achieving the required savings, and the balance, if any, shall be provided in the following order: \$10,000,000 to the Children Investment Trust, \$1,511,000 to the Department of Parks and Recreation, \$1,293,000 to the Department of Fire and Emergency Medical Services, \$120,000 to the Commission on Arts and the Humanities, \$400,000 to the District of Columbia Library, \$574,000 to the Office on Aging, \$3,296,000 to the Department of Housing and Community Development, \$200,000 to the Department of Employment Services, \$2,500,000 to the University of the District of Columbia, \$1,500,000 to Public Works, \$1,000,000 to Department of Motor Vehicles, \$4,245,000 to the Department of Health, \$1,500,000 to the Commission on Latino Affairs, \$1,550,000 to the Taxicab Commission, \$2,500,000 to the Office of Property Management, and \$5,000,000 for the savings associated with the implementation of the Cafeteria Plan, if the Chief Financial Officer certifies that the \$37,000,000 is not required to replace funds expended in Fiscal Year 2000 from the Reserve established by section 202(i) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, Pub. Law 104-8, in Fiscal Year 2000, and that all the savings are being achieved from the Management Savings;

"(3) The next \$10,000,000 shall be used to provide \$10,000,000 to Operational Improvement to the extent, if any, the Chief Financial

Officer determines the Operational Improvement is not achieving the required savings, and the balance, if any, shall be provided in the following order: \$100,000 to the Civilian Complaint Review Board, \$200,000 to the Metropolitan Police Department for the Emergency Response Team, \$1,042,000 to be used for Training, \$4,890,000 to the Settlement and Judgments Funds, and \$3,140,000 to the District of Columbia Financial Responsibility and Management Assistance Authority, if the Chief Financial Officer certifies that the \$10,000,000 is not required to replace funds expended in Fiscal Year 2000 from the Reserve established by section 202(i) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, Pub. Law 104-8, in Fiscal Year 2000 and that all the savings are being achieved from the Operational Improvement Savings; and

“(4) The balance shall be used for Pay-As-You-Go Capital Funds in lieu of capital financing if the Chief Financial Officer certifies that the balance is not required to replace funds expended in Fiscal Year 2000 from the Reserve established by section 202(i) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, Pub. Law 104-8.”

Section 802 of D.C. Law 14-307 provided: “The Criteria for Spending Pay-As-You-Go Funding Act of 2002, effective October 1, 2002 (D.C. Law 14-190; 49 DCR 6968), is repealed.”

Section 2202 of Law 15-39 provided:

“(a) The Fiscal Year 2004 budget for the Metropolitan Police Department is enacted at the program level with funding totals for Agency Management Program, Regional Field Operations, Investigative Field Operations, Special Field Operations, Public Safety Communications Center, Police Business Services, and Organizational Change and Professional Responsibility.

“(b) For the purposes of this title, the term ‘program’ shall be a budget category consistent with D.C. Official Code § 47-361(10).

“(c) Reprogrammings from program to program under this title shall be in accordance with D.C. Official Code § 47-363.”

Section 2502 of D.C. Law 15-39 provided:

“(a) Of the Pay-As-You-Go Capital funding for Fiscal Year 2004, a total of \$11.257 million shall be made available for Pay-As-You-Go once the Chief Financial Officer has determined and certified that those funds are not necessary for any of the following purposes:

“(1) The Metropolitan Police Department, up to \$1.097 million, to cover the costs of an additional 100 officers;

“(2) The Child and Family Services Agency, up to \$2.5 million, to cover court mandated hiring of social workers;

“(3) The Youth Services Administration, up to \$3 million, to cover court mandated expenses for foster care homes for committed youth, intensive substance abuse services, or community based therapeutic group homes;

“(4) The Department of Mental Health, up to \$2 million, to cover court mandated staff hiring expenses;

“(5) The Department of Health, up to \$2 million, to cover inflationary increases for institutional Medicaid providers; or

“(6) Up to \$660,000 to cover court mandated costs.

“(b) No Pay-As-You-Go funding shall be available for the Metropolitan Police Department, unless the Chief Financial Officer has determined, certified, and provided written notification to the Council that the Metropolitan Police Department has reached a sworn police officer level of 3700.

“(c) No Pay-As-You-Go funding shall be available for the Child and Family Services Agency, unless the Chief Financial Officer has determined, certified, and provided written notification to the Council that the purpose of the funding is to hire additional social workers.

“(d) No Pay-As-You-Go funding shall be available for the Youth Services Administration, unless the Chief Financial Officer has determined, certified, and provided written notification to the Council that the funding is needed to comply with the court mandate.

“(e) No Pay-As-You-Go funding shall be available for the Department of Mental Health, unless the Chief Financial Officer has determined, certified, and provided written notification to the Council that the funding is needed to hire staff to comply with the court mandate.

“(f) No Pay-As-You-Go funding shall be available for the Department of Health, unless the Chief Financial Officer has determined, certified, and provided written notification to the Council that the funding is needed to meet inflationary increases for Medicaid providers.

“(g) No Pay-As-You-Go funding shall be available to cover court mandated costs pursuant to subsection (a)(6) of this section, unless the Chief Financial Officer has determined, certified, and provided written notification to the Council that the funding is needed for such purpose.”

Section 2802 of D.C. Law 15-39 provided:

“For Fiscal Year 2004, the Department of Employment Services (‘DOES’) shall have:

“(1) No more than 551 full time equivalent (‘FTE’) employees; and

“(2) A total budget of \$87,613,00, to be allocated as follows:

“(A) Personal Services budget not to exceed \$31,635,824; and

“(B) Nonpersonal Services budget not to exceed \$55,924,229, including no less than \$35,430,176 for Subsidies and Transfers.”

Section 2902 of D.C. Law 15-39 provided:

"(a) The Mayor shall create not less than a \$10 million savings in the total estimated costs of all District government contracts during Fiscal Year 2004, through either contract administration efficiencies or through the negotiation or renegotiation of a sufficient number of District government contracts by first examining all sole source and personal services contracts as well as cuts in contracts where contractors are billing at an annual rate of more than \$150,000 a year prior to considering reductions in contractual services that directly benefit and affect residents, which savings shall be realized and allocated in not less than the following amounts in the following titles of the District of Columbia Fiscal Year 2004 budget as appropriated by Congress:

"(1) Governmental Direction and Support: \$621,000;

"(2) Economic Development and Regulation: \$160,000;

"(3) Public Safety and Justice: \$2,152,000;

"(4) Public Education System: \$2,879,000;

"(5) Human Support Services: \$3,280,000; and

"(6) Public Works: \$928,000.

"(b) In the event that proposed cuts create unforeseen operational or financial complications, the Mayor shall identify and implement alternate contract reductions. In the instance that after a comprehensive review of contracts the Mayor demonstrates and the CFO certifies that some amount not to exceed \$5 million in contract savings can not be achieved without excessive operational or financial complications, that unachievable amount shall be transferred from the unrestricted unreserved fund balance to offset the unachievable savings."

Section 3102 of D.C. Law 15-39 provided:

"(a) Before any funds may be expended for project number CAC37C, denominated in the budget and financial plan as the Gayle School Child Advocacy Center Modernization, the Mayor shall submit to the Council, and the Council shall approve, a plan for the use of this funding. The plan shall include:

"(1) The nature and purpose of the planned renovations;

"(2) A detailed statement of the planned renovations;

"(3) The use of the property after the renovations are completed;

"(4) The occupant of the property after the renovations are completed;

"(5) Whether a declaration of surplus for the property is to be sought and, if so, plans for disposition, if any, of the property and the proposed terms of the disposition.

"(b) The proposed plan shall be submitted to the Council for approval, by resolution for a 90-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council

recess. If the proposed plan has not been approved by the Council within the 90-day period, the proposed plan shall be deemed disapproved.

"(c) The Chief Financial Officer of the District of Columbia shall certify that expenditure of funds for the project is authorized under the budget and financial plan."

Sections 1002 and 1003 of D.C. Law 15-205 provided:

"Sec. 1002. Criteria for spending Pay-As-You-Go Contingency funding in fiscal year 2005.

"(a) Of the Pay-As-You-Go Contingency funding for fiscal year 2005, a total of \$43,137,000 shall be made available upon the Mayor's submission of a request to the Council for its approval, as provided in subsection (c) of this subtitle, in which the Mayor demonstrates and the Chief Financial Officer ('CFO') certifies that funds are needed as follows:

"(1) The Department of Human Services:

"(A) Up to \$2 million for Mental Retardation & Developmental Disabilities Administration; provided, that the CFO certifies that the requested funds are necessary to meet court-mandated expenditures that otherwise cannot be met by the appropriation;

"(B) Up to \$5.4 million for the Youth Services Administration; provided, that the CFO certifies that the requested funds are necessary for the operation of Oak Hill Youth Center and the Mt. Olivet Youth Services Center;

"(2) The Child and Family Services Agency:

"(A) Up to \$2 million for the Early Intervention Initiative; provided, that the CFO certifies that a federal payment will not be available for this purpose on October 1, 2004; provided further, that should a federal payment for this purpose become available, an amount equal to the federal payment shall revert to the Pay-As-You Go Capital fund;

"(B) Up to \$6 million for the Title IV-E program; provided, that the CFO certifies that requested amendments to Title IV-E of the Federal Social Security Act providing additional federal funding for the Title IV-E program shall not be enacted in federal law on October 1, 2004; provided further, that should federal funding become available pursuant to an amendment to Title IV-E of the Federal Social Security Act, any local funds made available pursuant to this subparagraph that the CFO certifies are not needed, based upon the amendment, shall revert to the Pay-As-You Go Capital fund;

"(C) Up to \$3 million for Medicaid-related expenses; provided, that the CFO certifies that improvements in the cost-reimbursement process have been made and that Medicaid revenue projections indicate that the requested funds remain necessary; provided further, that of the funds provided pursuant to this subparagraph, the requested amount shall be reduced

or refunded by any further CFO-certified increases in Federal Medicaid Reimbursements, over the amount previously certified as revenue projections by the CFO pursuant to this subparagraph, as a result of the improvements;

“(D) Up to \$1.9 million for family-based therapeutic foster care services; provided, that the Mayor submits documentary evidence showing that all contracts related to foster care services were competitively bid;

“(E) Up to \$5 million for out-of-home care and community based services; provided, that the Mayor includes in his submission to the Council documentary evidence, certified by the CFO, showing that the projected utilization requires the use of the requested funds;

“(3) The Department of Mental Health, up to \$11 million for Medicaid-related expenses; provided, that the CFO certifies that improvements in the cost-reimbursement process have been made and that Medicaid revenue projections indicate that the requested funds remain necessary; provided further, that of the funds made available pursuant to this paragraph, the requested amount shall be reduced or refunded by any further CFO-certified increases in Federal Medicaid Reimbursements, over the amount previously certified as revenue projections by the CFO pursuant to this paragraph, as a result of the improvements;

“(4) The Department of Health:

“(A) Up to \$3 million for Health Care Safety Net; provided, that the Mayor includes in his submission to the Council documentary evidence, certified by the CFO, showing that the projected utilization requires the use of the requested funds;

“(B) Up to \$2 million for the Addiction Prevention & Recovery Administration; provided, that the CFO certifies that additional funding from a federal grant will not be available on October 1, 2004; provided further, that should additional federal grant funding become available for addiction prevention and recovery, an amount equal to the federal payment shall be allocated to the Office of Property Management for transitional office space requirements;

“(5) The Office of the Inspector General, up to one million; provided, that the CFO certifies that the requested funds are necessary for Congressionally approved funding;

“(6) The Department of Employment Services, up to \$500,000; provided, that the Mayor includes in his submission to the Council documentary evidence, certified by the CFO, showing that the agency has applied for, but not received, relevant federal grants not included in the ceiling of the fiscal year 2005 appropriation for the purpose for which the requested funds are needed; and

“(7) The Office of the Secretary, up to \$375,000; provided, that the CFO certifies that

the requested funds are necessary to cover lease costs.

“(b) Any funds not used for its stated purpose shall revert to the Pay-As-You-Go Capital fund.

“(c)(1) The Mayor shall transmit a request for funds to the Council for its approval. The transmittal shall include the CFO certification that the funds are needed for the stated purpose, accompanied by the CFO's independent analysis that led to the certification. If no written notice of disapproval of the request is filed with the Secretary to the Council within 14 calendar days of the receipt of a request from the Mayor or no oral notice of disapproval is given during a meeting of the Council during the 14 calendar day period, which review period shall begin on the 1st day following its receipt by the Office of the Secretary, the request shall be deemed to be approved. If a notice of disapproval is given during the 14 calendar day review period, the Council may approve or disapprove the request by resolution within 30 calendar days of the receipt of the request from the Mayor, or such request shall be deemed to be approved.

“(2) No request may be submitted to the Council under this subsection during such time as the Council is on recess, according to its rules, nor shall any time period provided in this subsection or in the Council's rules with respect to a request continue to run during such time as the Council is on recess.”

“Sec. 1003. Conflict of law.

“For the purpose of meeting the requirements of the District Anti-Deficiency Act of 2002, effective April 4, 2003 (D.C. Law 14-285; D.C. Official Code § 47-355.01 et seq.), the dollar amounts set forth in section 1002(a) as available to the listed agency shall for the first two quarters of the fiscal year be included in the agency's budget.”

Section 1011 of D.C. Law 16-33 provided: “Criteria for spending Pay-As-You-Go contingency funding in fiscal year 2006.

“(a) Of the Pay-As-You-Go contingency funding for fiscal year 2006, a total of \$12,461,994 shall be made available upon the Mayor's submission of a request to the Council for its approval, as provided in subsection (c) of this section, in which the Mayor demonstrates and the Chief Financial Officer (“CFO”) certifies that funds are needed as follows:

“(1) Office of Administrative Hearings, up to \$130,000 for security costs;

“(2) Department of Corrections, up to \$5,964,801 for nonpersonal services costs;

“(3) DC Emergency Management Agency, up to \$755,000 for relocation costs to move to the Office of Unified Communications building;

“(4) Department of Youth Rehabilitation Services, up to \$2,120,282 for personal and nonpersonal services;

“(5) The Wilson Building, up to \$491,911 for maintenance contract costs;

"(6) Child and Family Services Agency, up to \$1 million to support increased hiring;

"(7) District of Columbia Public Schools, up to \$1 million to fund an initiative to provide computers to McKinley Technology High School, Ballou High School, and other high schools in DCPS, to be used as matching funds; and

"(8) Office of the Mayor, up to \$1 million to support public education initiatives regarding voting rights in the District of Columbia.

"(b) Any funds not used for its stated purpose shall revert to the Pay-As-You-Go Capital fund.

"(c)(1) The Mayor shall transmit a request for funds in the form of a proposed resolution to the Council for its approval, which the Council may approve in whole or in part. The transmittal shall include CFO certification that the funds are needed for the stated purpose and the CFO's independent analysis that led to the certification. If no written notice of disapproval of the proposed resolution is filed with the Secretary to the Council within 14 calendar days of the receipt of a request from the Mayor or no oral notice of disapproval is given during a meeting of the Council during the 14 calendar

day period, which review period shall begin on the 1st day following its receipt by the Office of the Secretary, the proposed resolution shall be deemed to be approved. If a notice of disapproval is given during the 14 calendar day review period, the Council may approve or disapprove, in whole or in part, the request by resolution within 30 calendar days of the receipt of the request from the Mayor, or such request shall be deemed to be approved.

"(2) No request may be submitted to the Council under this subsection during such time as the Council is on recess, according to its rules, nor shall any time period provided in this subsection or in the Council's rules with respect to a request continue to run during such time as the Council is on recess."

Pub. L. 112-74, Div. C, Title IV, 125 Stat. 902, December 23, 2011, is the District of Columbia Appropriations Act, 2012, 125 Stat. 902, effective December 23, 2011.

Pub. L. 112-74, Div. C, Title VIII, 125 Stat. 940, effective December 23, 2011, also provided for appropriations and use of funds for the District of Columbia.

CASE NOTES

In general.

Any spending done by District of Columbia must be approved by Congressional appropriation. *Gray v. District of Columbia*, 477 F.Supp.2d 76, 2007 U.S. Dist. LEXIS 17382 (2007), affirmed by 2007 U.S. App. LEXIS 18717 (D.C. Cir. Aug. 2, 2007).

District of Columbia's failure to pay attorney fees awards to prevailing parties incurred in due process hearings pursuant to Individuals with Disabilities Education Act (IDEA) in excess of statutory cap did not violate IDEA's attorney fees provisions, where Congress did not appropriate funds for awards in excess of cap. *Gray v. District of Columbia*, 477 F.Supp.2d 76, 2007 U.S. Dist. LEXIS 17382 (2007), affirmed by 2007 U.S. App. LEXIS 18717 (D.C. Cir. Aug. 2, 2007).

An agent of the District of Columbia government is generally prohibited from spending money unless authorized by an act of Congress, and then only according to such act. D.C. Code 1981, § 47-304. *Adams v. Clinton*, 40 F.Supp.2d 1, 1999 U.S. Dist. LEXIS 4147 (1999), remanded by 90 F. Supp. 2d 35, 2000 U.S. Dist. LEXIS 3215 (D.D.C. 2000).

Proposed initiative that would have prohibited "booting" motor vehicles, and required granting amnesty from penalties for late payment of traffic fines was not proper subject of initiative; proposed initiative would have negated Budget Request Act to extent act was

based on projected revenues from those sources, and initiative improperly proposed a "laws appropriating funds." D.C. Code 1981, §§ 1-281(a), 1-1320(b)(1)(D), 47-304. *Dorsey v. District of Columbia Bd. of Elections & Ethics*, 648 A.2d 675, 1994 D.C. App. LEXIS 183 (1994).

Regardless of extent of responsibility for allocation of District of Columbia revenues that budgeting process assigns to District government's elected officials through their adoption of Budget Request Act, every District of Columbia Appropriations Act remains exclusively act of Congress that is subjected to same procedures that govern any appropriations measure, which is different and more active process than mere override oversight that is reserved for District's ordinary legislation. U.S. Const. Art. 1, § 10, cl. 1; D.C. Code 1981, §§ 1-233(c), 47-304. *District of Columbia v. American Fed'n of Gov't Employees*, 619 A.2d 77, 1993 D.C. App. LEXIS 13 (1993), writ of certiorari denied by 510 U.S. 933, 114 S. Ct. 347, 126 L. Ed. 2d 312, 1993 U.S. LEXIS 6594, 62 U.S.L.W. 3288, 144 L.R.R.M. (BNA) 2520 (1993).

Initiative to prohibit smoking in indoor workplaces and indoor public places would have negated or limited restaurant tax revenues relied on by the District of Columbia council and, thus, was not a proper subject matter for an initiative. *Restaurant Association of Metropolitan Washington v. D.C. Board of Elections and Ethics*, 132 WLR 1301 (Super. Ct. 2004).

§ 1-204.46a. Permitting increase in amount appropriated as local funds during a fiscal year.

(a) *In General.* — Notwithstanding the fourth sentence of § 1-204.46, to account for an unanticipated growth of revenue collections, the amount appropriated as District of Columbia funds under budget approved by Act of Congress as provided in such section may be increased —

(1) by an aggregate amount of not more than 25 percent, in the case of amounts allocated under the budget as “Other-Type Funds”; and

(2) by an aggregate amount of not more than 6 percent, in the case of any other amounts allocated under the budget.

(b) *Conditions.* — The District of Columbia may obligate and expend any increase in the amount of funds authorized under this section only in accordance with the following conditions:

(1) The Chief Financial Officer of the District of Columbia shall certify —

(A) the increase in revenue; and

(B) that the use of the amounts is not anticipated to have a negative impact on the long-term financial, fiscal, or economic health of the District.

(2) The amounts shall be obligated and expended in accordance with laws enacted by the Council of the District of Columbia in support of each such obligation and expenditure, consistent with any other requirements under law.

(3) The amounts may not be used to fund any agencies of the District government operating under court-ordered receivership.

(4) The amounts may not be obligated or expended unless the Mayor has notified the Committees on Appropriations of the House of Representatives and Senate, the Committee on Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate not fewer than 30 days in advance of the obligation or expenditure.

(c) *Effective Date.* — This section shall apply with respect to fiscal years 2006 through 2007.

(Dec. 24, 1973, 87 Stat. 801, Pub. L. 93-198, title IV, § 446a, as added Oct. 16, 2006, 120 Stat. 2020, Pub. L. 109-356, § 101(a).)

Editor’s notes. — For additional similar authority, see § 47-369.02.

§ 1-204.46b. Acceptance of grant amounts not included in annual budget.

(a) *Authority to accept, obligate, and expend amounts.* — Notwithstanding the fourth sentence of § 1-204.46, the Mayor, in consultation with the Chief Financial Officer of the District of Columbia may accept, obligate, and expend Federal, private, and other grants received by the District government that are not reflected in the budget approved by Act of Congress as provided in such section.

(b) *Conditions.* —

(1) *Role of chief financial officer; approval by council.* — No Federal,

private, or other grant may be accepted, obligated, or expended pursuant to subsection (a) until —

(A) the Chief Financial Officer submits to the Council a report setting forth detailed information regarding such grant; and

(B) the Council has reviewed and approved the acceptance, obligation, and expenditure of such grant.

(2) *Deemed approval by council.* — For purposes of paragraph (1)(B) of this subsection, the Council shall be deemed to have reviewed and approved the acceptance, obligation, and expenditure of a grant if —

(A) no written notice of disapproval is filed with the Secretary of the Council within 14 calendar days of the receipt of the report from the Chief Financial Officer under paragraph (1)(A) of this subsection; or

(B) if such a notice of disapproval is filed within such deadline, the Council does not by resolution disapprove the acceptance, obligation, or expenditure of the grant within 30 calendar days of the initial receipt of the report from the Chief Financial Officer under paragraph (1)(A) of this subsection.

(c) *No obligation or expenditure permitted in anticipation of receipt or approval.* — No amount may be obligated or expended from the general fund or other funds of the District of Columbia government in anticipation of the approval or receipt of a grant under subsection (b)(2) or in anticipation of the approval or receipt of a Federal, private, or other grant not subject to such subsection.

(d) *Adjustments to annual budget.* — The Chief Financial Officer may adjust the budget for Federal, private, and other grants received by the District government reflected in the amounts provided in the budget approved by Act of Congress under § 1-204.46, or approved and received under subsection (b)(2) to reflect a change in the actual amount of the grant.

(e) *Reports.* — The Chief Financial Officer shall prepare a quarterly report setting forth detailed information regarding all Federal, private, and other grants subject to this section. Each such report shall be submitted to the Council and to the Committees on Appropriations of the House of Representatives and Senate not later than 15 days after the end of the quarter covered by the report.

(f) *Effective date.* — This section shall apply with respect to fiscal year 2006 and each succeeding fiscal year.

(Dec. 24, 1973, 87 Stat. 801, Pub. L. 93-198, title IV, § 446b, as added Oct. 16, 2006, 120 Stat. 2040, Pub. L. 109-356, § 305(a); Mar. 11, 2009, 123 Stat. 696, Pub. L. 111-8, § 808(a).)

Effect of amendments. — Pub. L. 111-8, in subsec. (f), substituted “fiscal year 2006 and each succeeding fiscal year” for “fiscal years 2006 through 2008.”

Effective date. — Section 808(b) of Pub. L. 111-8 provided that the amendment made by subsection (a) shall take effect as if included in the enactment of the 2005 District of Columbia Omnibus Authorization Act Pub. L. 109-356.

Delegation of Authority. — Delegation of Additional Functions to the Office of Partnerships and Grant Services; Grantmaking Made Subject to Policies and Procedures Contained in City-Wide Grants Manual and Sourcebook; Establishment of Grantmaking Procedure Waiver Committee, see Mayor’s Order 2009-228, January 8, 2010 (57 DCR 530).

Delegation of Authority to the Child and

Family Services Agency under section 601(d) of the Prevention of Child Abuse and Neglect Act of 1977, see Mayor's Order 2010-185, December 27, 2010 (58 DCR 153).

§ 1-204.47. Consistency of budget, accounting, and personnel systems.

The Mayor shall implement appropriate procedures to insure that budget, accounting, and personnel control systems and structures are synchronized for budgeting and control purposes on a continuing basis. No employee shall be hired on a full-time or part-time basis unless such position is authorized by act of Congress. Employees shall be assigned in accordance with the program, organization, and fund categories specified in the act of Congress authorizing such position. Hiring of temporary employees and temporary employee transfers among programs shall be consistent with applicable acts of Congress and reprogramming procedures to insure that costs are accurately associated with programs and sources of funding.

(Dec. 24, 1973, 87 Stat. 801, Pub. L. 93-198, title IV, § 447.)

Cross references. — Fund accounting, duties of Mayor, see § 47-375.

Sports and entertainment commission, public or private bond sales, see § 3-1413.

Prior Codifications. — 1981 Ed., § 47-305. 1973 Ed., § 47-225.

Editor's notes. — Enactment upon adoption of federal legislation: Section 4 of D.C. Law 11-254 provided that "§§ 47-101, 47-117, 47-130, 47-301, 47-302, 47-303, 47-304, 47-304.1, 47-305, 47-310, 47-312, 47-317.1 through 47-

317.6, 47-321 through 47-325, 47-327 through 47-331, and 47-332 through 47-334 of Title 47 §§ 1-204.41, 1-204.55, 1-204.50, 1-204.42, 1-204.43, 1-204.44, 1-204.46, 1-204.53, 1-204.47, 1-204.48, 1-204.49, 1-204.24a through 1-204.24e, 47-317.06, 1-204.61 through 1-204.65, 1-204.71 through 1-204.75, 1-204.81, 1-204.85, 1-204.86 and 1-204.90, 2001 Ed. of the District of Columbia Code shall be enacted as part of Title 47 upon the adoption by Congress of legislation so enacting these sections."

§ 1-204.48. Financial duties of the Mayor.

(a) Subject to the limitations in § 1-206.03 and except to the extent provided under § 1-204.24d, the Mayor shall have charge of the administration of the financial affairs of the District and to that end he shall:

(1) Supervise and be responsible for all financial transactions to insure adequate control of revenues and resources and to insure that appropriations are not exceeded;

(2) Maintain systems of accounting and internal control designed to provide:

(A) Full disclosure of the financial results of the District government's activities;

(B) Adequate financial information needed by the District government for management purposes;

(C) Effective control over and accountability for all funds, property, and other assets;

(D) Reliable accounting results to serve as the basis for preparing and supporting agency budget requests and controlling the execution of the budget;

(3) Submit to the Council a financial statement in any detail and at such times as the Council may specify;

(4) Submit to the Council, by February 1st of each fiscal year, a complete

financial statement and report for the preceding fiscal year, as audited by the Inspector General of the District of Columbia in accordance with subsection (c) of this section in the case of fiscal years 2006 through 2008;

(5) Supervise and be responsible for the assessment of all property subject to assessment and special assessments within the corporate limits of the District for taxation, prepare tax maps, and give such notice of taxes and special assessments, as may be required by law;

(6) Supervise and be responsible for the levying and collection of all taxes, special assessments, license fees, and other revenues of the District, as required by law, and receive all moneys receivable by the District from the Federal Government or from any agency or instrumentality of the District, except that this paragraph shall not apply to moneys from the District of Columbia Courts.

(7) Have custody of all public funds belonging to or under the control of the District, or any agency of the District government, and deposit all funds coming into his hands, in such depositories as may be designated and under such terms and conditions as may be prescribed by act of the Council;

(8) Have custody of all investments and invested funds of the District government, or in possession of such government in a fiduciary capacity, and have the safekeeping of all bonds and notes of the District and the receipt and delivery of District bonds and notes for transfer, registration, or exchange; and

(9) Apportion the total of all appropriations and funds made available during the fiscal year for obligation so as to prevent obligation or expenditure thereof in a manner which would indicate a necessity for deficiency or supplemental appropriations for such fiscal year, and with respect to all appropriations or funds not limited to a definite period, and all authorizations to create obligations by contract in advance of appropriations, apportion the total of such appropriations or funds or authorizations so as to achieve the most effective and economical use thereof.

(b) Notwithstanding subsection (a) of this section, the Mayor may make any payments required by subsection (b) or subsection (c) [repealed] of § 1-204.83 and take any actions authorized by an act of the Council under § 1-204.67(b) or under subsection (a)(4)(A), or subsection (e), of § 1-204.90.

(c) The financial statement and report for a fiscal year prepared and submitted for purposes of subsection (a)(4) of this section shall be audited by the Inspector General of the District of Columbia (in coordination with the Chief Financial Officer of the District of Columbia) pursuant to § 2-302.08(a)(4), and shall include as a basic financial statement a comparison of audited actual year-end results with the revenues submitted in the budget document for such year and the appropriations enacted into law for such year using the format, terminology, and classifications contained in the law making the appropriations for the year and its legislative history.

(Dec. 24, 1973, 87 Stat. 801, Pub. L. 93-198, title IV, § 448; Oct. 13, 1977, 91 Stat. 1155, Pub. L. 95-131, § 2; Dec. 23, 1981, 95 Stat. 1493, Pub. L. 97-105, § 3; Aug. 5, 1997, 111 Stat. 753, Pub. L. 105-33, § 11243(b); Oct. 16, 2006, 120 Stat. 2036, 2041, Pub. L. 109-356, §§ 201(b)(1), 306.)

Cross references. — Financial plan and budget, control periods described, see § 47-392.09.

Fund accounting, Council findings, see § 47-371.

Fund accounting, duties of Mayor, see § 47-375.

Mayor, powers and duties, see § 1-204.22.

Mayor, proposed revenue measures, submission of impact statement, see § 1-301.61.

Procurement organization, office of the inspector general, powers and duties, reports, see § 2-302.08.

Section references. — This section is referred to in §§ 1-204.24c and 47-306.

Prior Codifications. — 1981 Ed., § 47-310. 1973 Ed., § 47-226.

Effect of amendments. — Pub. L. 109-356, in the introductory language of subsec. (a), inserted “and except to the extent provided under § 1-204.24d”; in subsec. (a)(4), inserted “, as audited by the Inspector General of the District of Columbia in accordance with subsection (c) of this section in the case of fiscal years 2006 through 2008;” and added subsec. (c).

Editor's notes. — Apportionment of Fiscal Year 1989 appropriations: See Mayor's Memorandum 89-14, May 12, 1989.

Authority of Mayor to contract with private financial institutions: See §§ 701 to 703 of the Act of June 15, 1976, D.C. Law 1-70.

Furloughing of employees: See Mayor's Order 96-72, May 22, 1996 (43 DCR 2919).

CASE NOTES

In general.

Provision of Omnibus Budget Support Emergency Act (OBSEA) continuing recycling program only to extent of funds available from recycling surcharge or solid waste management funds did not require mayor to use solid waste management funds to continue curbside recycling program even though result would be to discontinue garbage collection or other mandatory programs which mayor had determined would better serve public interest; OBSEA did not plainly provide for judicial intrusion into mayor's core executive function to apportion funds so as to achieve their most effective and economic use. D.C. Code 1981, § 6-3407(d), 47-310(a); D.C. Mun. Regs. title 42, §§ 2217, 2229. *District of Columbia v. Sierra Club*, 670 A.2d 354, 1996 D.C. App. LEXIS 7 (1996).

Proposed electoral initiative, to create Office of Public Advocate for Assessments and Taxation (OPA) with authority to appear and advocate on behalf of interest of public and general taxpayers of District of Columbia in administrative tax assessment proceedings and to appeal tax assessments by mayor to superior court and Court of Appeals, did not impermissibly infringe on mayor's responsibility for assessment of taxable property in violation of Home Rule Act. D.C. Code 1981, §§ 1-1320(b)(1), 47-310(a)(5). *Hessey v. Burden*, 584 A.2d 1, 1990 D.C. App. LEXIS 296 (1990), remanded by 615 A.2d 562, 1992 D.C. App. LEXIS 280 (D.C. 1992).

Neither the Self-Government Act, applicable provisions of the federal Anti-Deficiency Act, nor the 1990 District of Columbia Appropriations Act gave mayor the authority to unilaterally reduce the fiscal year appropriation for the Board of Education. D.C. Code 1981, §§ 47-301, 47-310, 47-312(2), 47-313(c, d); 31 U.S.C. § 1341(a)(1)(A); *District of Columbia Appropriations Act, 1990*, 103 Stat. 1267. *Barry v. Bush*, 581 A.2d 308, 1990 D.C. App. LEXIS 255 (1990).

Mayor was authorized to reduce funds allocated to District of Columbia public library in budget enacted by District's Council and in Appropriations Act enacted by Congress, in attempting to balance District's budget, despite library's status as statutory independent agency; mayor had statutory duty to balance budget regardless of sums previously appropriated, classification of library as statutory independent agency did not make library independent of mayor's fiscal authority, and neither Council's budget nor Appropriations Act contained any language requiring that reductions be made only in funding of agencies under mayor's control. D.C. Code 1981, §§ 1-299.6, 1-1502(5), 37-101, 37-106, 47-301(a)(1), 47-310(a)(9), 47-313(d); *District of Columbia Appropriations Act, 1990*, § 103, 103 Stat. 1267. *Hazel v. Barry*, 580 A.2d 110, 1990 D.C. App. LEXIS 226 (1990).

§ 1-204.49. Accounting supervision and control.

Except to the extent provided under § 1-204.24d, the Mayor shall:

(1) Prescribe the forms of receipts, vouchers, bills, and claims to be used by all the agencies, offices, and instrumentalities of the District government;

(2) Examine and approve all contracts, orders, and other documents by which the District government incurs financial obligations, having previously

ascertained that money has been appropriated and allotted and will be available when the obligations shall become due and payable;

(3) Audit and approve before payment all bills, invoices, payrolls, and other evidences of claims, demands, or charges against the District government and with the advice of the legal officials of the District determine the regularity, legality, and correctness of such claims, demands, or charges; and

(4) Perform internal audits of accounts and operations and agency records of the District government, including the examination of any accounts or records of financial transactions, giving due consideration to the effectiveness of accounting systems, internal control, and related administrative practices of the respective agencies.

(Dec. 24, 1973, 87 Stat. 802, Pub. L. 93-198, title IV, § 449; Oct. 16, 2006, 120 Stat. 2036, Pub. L. 109-356, § 201(b)(2).)

Cross references. — Procurement, limitation of contracting authority, see § 2-301.05.

Public employee relations board, powers and duties, see § 1-605.02.

Section references. — This section is referred to in § 47-375.

Prior Codifications. — 1981 Ed., § 47-312. 1973 Ed., § 47-227.

Effect of amendments. — Pub. L. 109-356, in the introductory language, inserted “Except to the extent provided under § 1-204.24d.”

Delegation of Authority. — Delegation of Contracting Authority, see Mayor’s Order 92-153, December 1, 1992.

Amendment of Mayor’s Order 90-178, Delegation of Contracting Authority: See Mayor’s Order 95-45, March 23, 1995.

Amendment of Mayor’s Order 90-178, Delegation of Contracting Authority: See Mayor’s Order 96-136, September 9, 1996 (43 DCR 5043).

Amendment of Mayor’s Order 90-178, Delegation of Contracting Authority: See Mayor’s Order 96-152, October 17, 1996 (43 DCR 5855).

Contracting authority for Year 2000 remediation contracts, see Mayor’s Order 99-54, March 5, 1999 (46 DCR 2831).

Amendment of Mayor’s Order 90-178, Delegation of Contracting Authority; Delegation of Personnel Authority; and Establishment of Position of Administrator in the Commission on Mental Health Services: See Mayor’s Order 96-172, December 9, 1996 (43 DCR 6973).

Amendment of Mayor’s Order 96-172, Establishing Position of Administrator in the Commission on Mental Health Services; Appointment of Interim Administrator; Duties of Administrator: See Mayor’s Order 97-6, January 9, 1997 (44 DCR 357).

Editor’s notes. — Enactment upon adoption of federal legislation: Section 4 of D.C. Law 11-254 provided that “§§ 47-101, 47-117, 47-130, 47-301, 47-302, 47-303, 47-304, 47-304.1, 47-305, 47-310, 47-312, 47-317.1 through 47-317.6, 47-321 through 47-325, 47-327 through 47-331, and 47-332 through 47-334 of Title 47 §§ 1-204.41, 1-204.55, 1-204.50, 1-204.42, 1-204.43, 1-204.44, 1-204.46, 1-204.53, 1-204.47, 1-204.48, 1-204.49, 1-204.24a through 1-204.24e, 47-317.06, 1-204.61 through 1-204.65, 1-204.71 through 1-204.75, 1-204.81, 1-204.85, 1-204.86 and 1-204.90, 2001 Ed. of the District of Columbia Code shall be enacted as part of Title 47 upon the adoption by Congress of legislation so enacting these sections.”

CASE NOTES

In general.

Neither the Self-Government Act, applicable provisions of the federal Anti-Deficiency Act, nor the 1990 District of Columbia Appropriations Act gave mayor the authority to unilaterally reduce the fiscal year appropriation for the

Board of Education. D.C. Code 1981, §§ 47-301, 47-310, 47-312(2), 47-313(c, d); 31 U.S.C. § 1341(a)(1)(A); District of Columbia Appropriations Act, 1990, 103 Stat. 1267. *Barry v. Bush*, 581 A.2d 308, 1990 D.C. App. LEXIS 255 (1990).

§ 1-204.50. General and special funds.

The General Fund of the District shall be composed of those District revenues which on January 2, 1975 are paid into the Treasury of the United

States and credited either to the General Fund of the District or its miscellaneous receipts, but shall not include any revenues which are applied by law to any special fund existing on January 2, 1975. The Council may from time to time establish such additional special funds as may be necessary for the efficient operation of the government of the District. All money received by any agency, officer, or employee of the District in its or his official capacity shall belong to the District government and shall be paid promptly to the Mayor for deposit in the appropriate fund, except that all money received by the District of Columbia Courts shall be deposited in the Treasury of the United States or the Crime Victims Fund.

(Dec. 24, 1973, 87 Stat. 803, Pub. L. 93-198, title IV, § 450; Aug. 5, 1997, 111 Stat. 753, Pub. L. 105-33, § 11243(c).)

Prior Codifications. — 1981 Ed., § 47-130. 1973 Ed., § 47-130b.

Editor's notes. — Definitions applicable: The definitions in § 1-202 apply to this section.

Enactment upon adoption of federal legislation: Section 4 of D.C. Law 11-254 provided that “§§ 47-101, 47-117, 47-130, 47-301, 47-302, 47-303, 47-304, 47-304.1, 47-305, 47-310, 47-312, 47-317.1 through 47-317.6, 47-321 through 47-325, 47-327 through 47-331, and 47-332

through 47-334 of Title 47 §§ 1-204.41, 1-204.55, 1-204.50, 1-204.42, 1-204.43, 1-204.44, 1-204.46, 1-204.53, 1-204.47, 1-204.48, 1-204.49, 1-204.24a through 1-204.24e, 47-317.06, 1-204.61 through 1-204.65, 1-204.71 through 1-204.75, 1-204.81, 1-204.85, 1-204.86 and 1-204.90, 2001 Ed. of the District of Columbia Code shall be enacted as part of Title 47 upon the adoption by Congress of legislation so enacting these sections.”

CASE NOTES

ANALYSIS

Construction with other laws.
In general.

Construction with other laws.

Council of District of Columbia did not violate Home Rule Act when it directed transfer of monies from Real Estate Guarantee and Education Fund to District's General Fund for purpose of balancing District's budget for fiscal year; provision of Act providing for special funds did not prohibit Council from legislating transfer of monies out of special fund and into General Fund. Wash., D.C. Ass'n of Realtors,

Inc. v. District of Columbia, 44 A.3d 299, 2012 D.C. App. LEXIS 271 (2012).

In general.

“Laws appropriating funds” as used in initiative statute permitting electors of District of Columbia to propose laws except laws appropriating funds means laws allocating funds; thus, right of initiative cannot extend to council's discretion to allocate revenues or to council's decision about when it would be necessary for efficient operation of government of District to establish special fund. D.C. Code 1981, §§ 1-281(a), 47-130. Hessey v. District of Columbia Bd. of Elections & Ethics, 601 A.2d 3, 1991 D.C. App. LEXIS 318 (1991).

§ 1-204.50a. Reserve funds.

(a) *Emergency reserve fund.* —

(1) *In general.* — There is established an emergency cash reserve fund (“emergency reserve fund”) as an interest-bearing account (separate from other accounts in the General Fund) into which the Mayor shall make a deposit in cash not later than October 1 of each fiscal year of such an amount as may be required to maintain a balance in the fund of at least 2 percent of the operating expenditures as defined in paragraph (2) of this subsection or such amount as may be required for deposit in a fiscal year in which the District is replenishing the emergency reserve fund pursuant to paragraph (7).of this subsection.

(2) *“Operating expenditures” defined.* — For the purpose of this subsection, operating expenditures is defined as the amount reported in the District of Columbia’s Comprehensive Annual Financial Report for the fiscal year immediately preceding the current fiscal year as the actual operating expenditure from local funds, less such amounts that are attributed to debt service payments for which a separate reserve fund is already established under this chapter.

(3) *Interest.* — Interest earned on the emergency reserve fund shall remain in the account and shall only be withdrawn in accordance with paragraph (4) of this subsection.

(4) *Criteria for use of amounts in emergency reserve fund.* — The Chief Financial Officer, in consultation with the Mayor, shall develop a policy to govern the emergency reserve fund which shall include (but which may not be limited to) the following requirements:

(A) The emergency reserve fund may be used to provide for unanticipated and nonrecurring extraordinary needs of an emergency nature, including a natural disaster or calamity as defined by section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 100-707) or unexpected obligations by Federal law.

(B) The emergency reserve fund may also be used in the event of a State of Emergency as declared by the Mayor pursuant to § 7-2304.

(C) The emergency reserve fund may not be used to fund:

(i) Any department, agency, or office of the Government of the District of Columbia which is administered by a receiver or other official appointed by a court;

(ii) Shortfalls in any projected reductions which are included in the budget proposed by the District of Columbia for the fiscal year; or

(iii) Settlements and judgments made by or against the Government of the District of Columbia.

(5) *Allocation of emergency cash reserve funds.* — Funds may be allocated from the emergency reserve fund only after:

(A) An analysis has been prepared by the Chief Financial Officer of the availability of other sources of funding to carry out the purposes of the allocation and the impact of such allocation on the balance and integrity of the emergency reserve fund; and

(B) With respect to fiscal years beginning with fiscal year 2005, the contingency reserve fund established by subsection (b) of this section has been projected by the Chief Financial Officer to be exhausted at the time of the allocation.

(6) *Notice.* — The Mayor, the Council, and (in the case of a fiscal year which is a control year, as defined in § 47-393(4)) the District of Columbia Financial Responsibility and Management Assistance Authority shall notify the Committees on Appropriations of the Senate and House of Representatives in writing not more than 30 days after the expenditure of funds from the emergency reserve fund.

(7) *Replenishment.* —

(A) *In general.* — The District of Columbia shall appropriate sufficient funds each fiscal year in the budget process to replenish any amounts allocated

from the emergency reserve fund during the preceding fiscal years so that not less than 50 percent of any amount allocated in the preceding fiscal year or the amount necessary to restore the emergency reserve fund to the 2 percent required balance, whichever is less, is replenished by the end of the first fiscal year following each such allocation and 100 percent of the amount allocated or the amount necessary to restore the emergency reserve fund to the 2 percent required balance, whichever is less, is replenished by the end of the second fiscal year following each such allocation.

(B) *Special rule for replenishment after allocation for cash flow management.* —

(i) *In general.* — If the District allocates amounts from the emergency reserve fund during a fiscal year for cash flow management purposes pursuant to the authority of subsection (c) of this section and at any time afterwards during the year makes a subsequent allocation from the fund for purposes of this subsection, and if as a result of the subsequent allocation the balance of the fund is reduced to an amount which is less than 50 percent of the balance of the fund as of the first day of the fiscal year, the District shall replenish the fund by such amount as may be required to restore the balance to an amount which is equal to 50 percent of the balance of the fund as of the first day of the fiscal year.

(ii) *Deadline.* — The District shall carry out any replenishment required under sub-subparagraph (i) of this subparagraph as a result of a subsequent allocation described in such sub-subparagraph not later than the expiration of the 60-day period which begins on the date of the subsequent allocation.

(b) *Contingency reserve fund.* —

(1) *In general.* — There is established a contingency cash reserve fund (“contingency reserve fund”) as an interest-bearing account, separate from other accounts in the General Fund, into which the Mayor shall make a deposit in cash not later than October 1 of each fiscal year of such amount as may be required to maintain a balance in the fund of at least 4 percent of the operating expenditures as defined in paragraph (2) of this subsection or such amount as may be required for deposit in a fiscal year in which the District is replenishing the emergency reserve fund pursuant to paragraph (6) of this subsection.

(2) *“Operating expenditures” defined.* — For the purpose of this subsection, operating expenditures is defined as the amount reported in the District of Columbia’s Comprehensive Annual Financial Report for the fiscal year immediately preceding the current fiscal year as the actual operating expenditure from local funds, less such amounts that are attributed to debt service payments for which a separate reserve fund is already established under this chapter.

(3) *Interest.* — Interest earned on the contingency reserve fund shall remain in the account and may only be withdrawn in accordance with paragraph (4) of this section.

(4) *Criteria for use of amounts in contingency reserve fund.* — The Chief Financial Officer, in consultation with the Mayor, shall develop a policy governing the use of the contingency reserve fund which shall include (but which may not be limited to) the following requirements:

(A) The contingency reserve fund may only be used to provide for nonrecurring or unforeseen needs that arise during the fiscal year, including expenses associated with unforeseen weather or other natural disasters, unexpected obligations created by Federal law or new public safety or health needs or requirements that have been identified after the budget process has occurred, or opportunities to achieve cost savings.

(B) The contingency reserve fund may be used, if needed, to cover revenue shortfalls experienced by the District government for 3 consecutive months (based on a 2 month rolling average) that are 5 percent or more below the budget forecast.

(C) The contingency reserve fund may not be used to fund any shortfalls in any projected reductions which are included in the budget proposed by the District of Columbia for the fiscal year.

(5) *Allocation of contingency cash reserve.* — Funds may be allocated from the contingency reserve fund only after an analysis has been prepared by the Chief Financial Officer of the availability of other sources of funding to carry out the purposes of the allocation and the impact of such allocation on the balance and integrity of the contingency reserve fund.

(6) *Replenishment.* —

(A) *In general.* — The District of Columbia shall appropriate sufficient funds each fiscal year in the budget process to replenish any amounts allocated from the contingency reserve fund during the preceding fiscal years so that not less than 50 percent of any amount allocated in the preceding fiscal year or the amount necessary to restore the contingency reserve fund to the 4 percent required balance, whichever is less, is replenished by the end of the first fiscal year following each such allocation and 100 percent of the amount allocated or the amount necessary to restore the contingency reserve fund to the 4 percent required balance, whichever is less, is replenished by the end of the second fiscal year following each such allocation.

(B) *Special rule for replenishment after allocation for cash flow management.* —

(i) *In general.* — If the District allocates amounts from the contingency reserve fund during a fiscal year for cash flow management purposes pursuant to the authority of subsection (c) and at any time afterwards during the year makes a subsequent allocation from the fund for purposes of this subsection, and if as a result of the subsequent allocation the balance of the fund is reduced to an amount which is less than 50 percent of the balance of the fund as of the first day of the fiscal year, the District shall replenish the fund by such amount as may be required to restore the balance to an amount which is equal to 50 percent of the balance of the fund as of the first day of the fiscal year.

(ii) *Deadline.* — The District shall carry out any replenishment required under sub-subparagraph (i) of this subparagraph as a result of a subsequent allocation described in such sub-subparagraph not later than the expiration of the 60-day period which begins on the date of the subsequent allocation.

(c) *Additional authority to allocate amounts.* —

(1) *In general.* — Notwithstanding any other provision of this section, in addition to the authority provided under this section to allocate and use amounts from the emergency reserve fund under subsection (a) of this section and the contingency reserve fund under subsection (b) of this section, the District of Columbia may allocate amounts from such funds during a fiscal year and use such amounts for cash flow management purposes.

(2) *Limits on amount allocated.* —

(A) *Amount of individual allocation.* — The amount of an allocation made from the emergency reserve fund or the contingency reserve fund pursuant to the authority of this subsection may not exceed 50 percent of the balance of the fund involved at the time the allocation is made.

(B) *Aggregate amount allocated.* — The aggregate amount allocated from the emergency reserve fund or the contingency reserve fund pursuant to the authority of this subsection during a fiscal year may not exceed 50 percent of the balance of the fund involved as of the first day of such fiscal year.

(3) *Replenishment.* — If the District of Columbia allocates any amounts from a reserve fund pursuant to the authority of this subsection during a fiscal year, the District shall fully replenish the fund for the amounts allocated not later than the earlier of —

(A) the expiration of the 9-month period which begins on the date the allocation is made; or

(B) the last day of the fiscal year.

(4) *Effective date.* — This subsection shall apply with respect to fiscal years 2006 through 2007.

(d) *Quarterly reports.* — The Chief Financial Officer shall submit a quarterly report to the Mayor, the Council, the District of Columbia Financial Responsibility and Management Assistance Authority (in the case of a fiscal year which is a control year, as defined in § 47-393(4)), and the Committees on Appropriations of the Senate and House of Representatives that includes a monthly statement on the balance and activities of the contingency and emergency reserve funds.

(Dec. 24, 1973, 87 Stat. 803, Pub. L. 93-198; title IV, 450A as added Nov. 22, 2000, 114 Stat. 2440, Pub. L. 106-522, § 159(a)(1); Dec. 21, 2001, 107 Stat. 956, Pub. L. 107-96, § 133(d); Oct. 18, 2004, 118 Stat. 1345, Pub. L. 108-335, § 332; Oct. 16, 2006, 120 Stat. 2021, 2028, Pub. L. 109-356, §§ 102, 122(a).)

Prior Codifications. — 1981 Ed., § 47-130.1.

Effect of amendments. — Pub. L. 107-96 rewrote subsec. (b)(1) which had read as follows: “(1) *In general.*—There is established a contingency cash reserve fund (in this subsection referred to as the ‘contingency reserve fund’) as an interest-bearing account (separate from other accounts in the General Fund) into which the Mayor shall deposit in cash not later than October 1 of each fiscal year (beginning with fiscal year 2005) such amount as may be required to maintain a balance in the fund of at

least 3 percent of the total budget appropriated for operating expenditures for such fiscal year which is derived from local funds (or, in the case of fiscal years prior to fiscal year 2007, such amount as may be required to maintain a balance in the fund of at least the minimum contingency reserve balance for such fiscal year, as determined under paragraph (2) of this subsection).”

Pub. L. 108-335 rewrote pars. (1), (2), and (7) of subsec. (a), and rewrote pars. (1), (2), and (6) of subsec. (b).

Pub. L. 109-356, in the heading of subsecs.

(a)(2) and (b)(2), substituted "Operating expenditures defined" for "In general"; in subsec. (a)(7), designated subpar. (A) and added subpar. (B); in subsec. (b)(6), designated subpar. (A) and added subpar. (B); redesignated former subsec. (c) as subsec. (d); and inserted a new subsec. (c).

Temporary Addition of Section. — Section 103 of D.C. Law 17-326 added provisions to read as follows:

"Sec. 103. Operating Cash Reserve fund; establishment.

"(a) The Chief Financial Officer shall create a special fund designated as the Operating Cash Reserve ('OCR') fund into which \$46 million in fiscal year 2009 shall be designated for the following purposes:

"(1) An amount of \$15.491 million from the Department of Housing and Community Development for the following programs:

"(A) An amount of \$11 million to expand down-payment assistance for over 500 first-time home buyers;

"(B) An amount of \$592,000 for nonpersonal services for the Housing Regulation Administration; and

"(C) An amount of \$3.899 million to create a land-acquisition fund for direct investment in affordable housing development projects.

"(2) An amount of \$7.129 million from the Department of Human Services for Housing First wrap-around services and supportive housing for at-risk homeless;

"(3) An amount of \$200,000 from the Department of Public Works for the following programs:

"(A) An amount of \$100,000 for the Anti-Graffiti Mural Support Program Fund; and

"(B) An amount of \$100,000 for the anti-graffiti paint to be used in conjunction with alley-cutback and graffiti removal programs;

"(4) An amount of \$9 million from the Pay-As-You-Go Capital Fund for the following programs:

"(A) An amount of \$500,000 for the creation of a nonlapsing fund for the Pedestrian and Bicycle Safety and Enhancement Fund;

"(B) An amount of \$3.2 million to the Department of Housing and Community Development for Home Again;

"(C) An amount of \$4.5 million to the Department of Human Services for the case-management system;

"(D) An amount of \$400,000 to the District Department of Transportation for repair and maintenance to curbs, sidewalks, and alleys, and Square 394/lot 59 paving and drainage in the easement; and

"(E) An amount of \$400,000 to the District Department of Transportation for repair and maintenance to curbs and sidewalks from the prior year carryover;

"(5) An amount of \$3.557 million from the Deputy Mayor for Planning and Economic Development for the following programs:

"(A) An amount of \$2.279 million to expand the New Communities human capital;

"(B) An amount of \$588,000 to develop a database for tracking the affordable-housing pipeline;

"(C) An amount of \$500,000 to the Ward 4 BID Demonstration Project and capital improvement grants to businesses on Georgia Avenue and Kennedy Street, N.W.; and

"(D) An amount of \$190,000 to the Ward 4 BID Demonstration Project and capital improvements to Georgia Avenue in Ward 1;

"(6) An amount of \$442,000 from the District of Columbia Public Library to upgrade branch library furniture, fixtures, and equipment;

"(7) An amount of \$191,000 from the Department of Health to perform a feasibility analysis of residential substance abuse treatment facilities; and

"(8) An amount of \$10 million from the Committee on Health to be used for the Health Programs Contingency Fund reserved for health-related one-time expenditure needs from savings identified by the Committee on Health.

"(b)(1) In fiscal year 2009, no funds shall be transferred from the OCR fund until release of the February revised revenue estimate and approval by Counsel of the use of the OCR funds.

"(2) The Council shall approve by act the use of OCR funds.

"(c) Following fiscal year 2009:

"(1) The amount of \$46 million shall be placed into the OCR fund in fiscal year 2010;

"(2) The amount of \$48 million shall be placed into the OCR fund in fiscal year 2011; and

"(3) The amount of \$50 million shall be placed into the OCR fund in fiscal year 2012."

Section 402(b) of D.C. Law 17-326 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition, see § 102 of Fiscal Year 2009 Balanced Budget Support Emergency Amendment Act of 2008 (D.C. Act 17-572, December 2, 2008, 55 DCR 12452).

For temporary (90 day) detail of purpose of expenditures, see § 2 of Use of the Reserve Funds Omnibus Emergency Act of 2002 (D.C. Act 14-360, April 30, 2002, 49 DCR 4724).

For temporary (90 day) addition, see § 103 of Fiscal Year 2009 Balanced Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-13, February 23, 2009, 56 DCR 1920).

Effective date. — Section 122(b) of Pub. L. 109-356 provided that the amendment made by subsection (a) shall take effect as if included in

the enactment of the District of Columbia Appropriation Act, 2005 Pub. L. 108-335.

Editor's notes. — Section 404(c) of Chapter 4 of Division A of H.R. 5666 provided:

“(c)(1) The Mayor of the District of Columbia shall deposit the annual interest savings resulting from debt reductions using the proceeds of the tobacco securitization program into the emergency reserve fund established under sec-

tion 450A of the District of Columbia Home Rule Act (as added by section 159 of the District of Columbia Appropriations Act, 2001).

“(2) This subsection shall apply with respect to fiscal year 2001 and each succeeding fiscal year until the requirements of section 450A of the District of Columbia Home Rule Act have been met.”

§ 1-204.50b. Comprehensive Financial Management Policy.

(a) *Comprehensive Financial Management Policy.* — The District of Columbia shall conduct its financial management in accordance with a comprehensive financial management policy.

(b) *Contents of Policy.* — The comprehensive financial management policy shall include, but not be limited to, the following:

(1) A cash management policy.

(2) A debt management policy.

(3) A financial asset management policy.

(4) An emergency reserve management policy in accordance with § 1-204.50a(a).

(5) A contingency reserve management policy in accordance with section § 1-204.50a(b).

(6) A policy for determining real property tax exemptions for the District of Columbia.

(c) *Annual Review.* — The comprehensive financial management policy shall be reviewed at the end of each fiscal year by the Chief Financial Officer who shall:

(1) Not later than July 1 of each year, submit any proposed changes in the policy to the Mayor and (in the case of a fiscal year which is a control year, as defined in § 47-393(4)) the District of Columbia Financial Responsibility and Management Assistance Authority (Authority) for review;

(2) Not later than August 1 of each year, after consideration of any comments received under paragraph (1) of this subsection, submit the changes to the Council of the District of Columbia (Council) for approval; and

(3) Not later than September 1 of each year, notify the Committees on Appropriations of the Senate and House of Representatives, the Committee on Government Reform of the House of Representatives, and the Committee on Governmental Affairs of the Senate of any changes enacted by the Council.

(d) *Procedure for Development of First Comprehensive Financial Management Policy.* —

(1) *Chief Financial Officer.* — Not later than April 1, 2001, the Chief Financial Officer shall submit to the Mayor an initial proposed comprehensive financial management policy for the District of Columbia pursuant to this section.

(2) *Council.* — Following review and comment by the Mayor, not later than May 1, 2001, the Chief Financial Officer shall submit the proposed financial management policy to the Council for its prompt review and adoption.

(3) *Authority.* — Upon adoption of the financial management policy under paragraph (2) of this subsection, the Council shall immediately submit the policy to the Authority for a review of not to exceed 30 days.

(4) *Congress.* — Following review of the financial management policy by the Authority under paragraph (3) of this subsection, the Authority shall submit the policy to the Committees on Appropriations of the Senate and House of Representatives, the Committee on Government Reform of the House of Representatives, and the Committee on Governmental Affairs of the Senate for review, and the policy shall take effect 30 days after the date the policy is submitted under this paragraph.

(Dec. 24, 1973, 87 Stat. 803, Pub. L. 93-198; title IV, § 450B as added Nov. 22, 2000, 114 Stat. 2440, Pub. L. 106-552, § 154(a).)

Prior Codifications. — 1981 Ed., § 47-130.2.

Emergency legislation. — For temporary (90 day) approval of financial management policy, see § 2 of FY 2001 Comprehensive Financial Management Policy Approval Emergency Act of 2002 (D.C. Act 14-342, April 26, 2002, 49 DCR 4293).

For temporary (90 day) amendment of section, see § 1802 of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

Short title. — Short title of title XVIII of Law 14-190: Section 1801 of D.C. Law 14-190 provided that title XVIII of the act may be cited

as the FY 2002 Comprehensive Financial Management Policy Approval Act of 2002.

Editor's notes. — Section 154 (c) of Public Law 106-522 provided: "This section and the amendments made by this section shall take effect on October 1, 2000."

Section 1802 of D.C. Law 14-190 provided: "Pursuant to section 450B of the District of Columbia Home Rule Act, approved November 22, 2000 (114 Stat. 2475; D.C. Official Code § 1-204.50b), the Council hereby approves the FY 2002 Comprehensive Financial Management Policy approved by the Mayor and transmitted to the Council on March 18, 2002."

§ 1-204.51. Special rules regarding certain contracts.

(a) *Contracts extending beyond one year.* — No contract involving expenditures out of an appropriation which is available for more than 1 year shall be made for a period of more than 5 years unless, with respect to a particular contract, the Council, by a two-thirds vote of its members present and voting, authorizes the extension of such period for such contract. Such contracts shall be made pursuant to criteria established by act of the Council.

(b) *Contracts exceeding certain amount.*

(1) *In general.* — No contract involving expenditures in excess of \$1,000,000 during a 12-month period may be made unless the Mayor submits the contract to the Council for its approval and the Council approves the contract (in accordance with criteria established by act of the Council).

(2) *Deemed approval.* — For purposes of paragraph (1) of this subsection, the Council shall be deemed to approve a contract if —

(A) during the 10-day period beginning on the date the Mayor submits the contract to the Council, no member of the Council introduces a resolution approving or disapproving the contract; or

(B) during the 45-calendar day period beginning on the date the Mayor submits the contract to the Council, the Council does not disapprove the contract.

(c) *Multiyear contracts.* —

(1) The District may enter into multiyear contracts to obtain goods and services for which funds would otherwise be available for obligation only within the fiscal year for which appropriated.

(2) If the funds are not made available for the continuation of such a contract into a subsequent fiscal year, the contract shall be cancelled or terminated, and the cost of cancellation or termination may be paid from —

(A) appropriations originally available for the performance of the contract concerned;

(B) appropriations currently available for procurement of the type of acquisition covered by the contract, and not otherwise obligated; or

(C) funds appropriated for those payments.

(3) No contract entered into under this subsection shall be valid unless the Mayor submits the contract to the Council for its approval and the Council approves the contract (in accordance with criteria established by act of the Council). The Council shall be required to take affirmative action to approve the contract within 45 days. If no action is taken to approve the contract within 45 calendar days, the contract shall be deemed disapproved.

(d) *Exemption for certain contracts.* — The requirements of this section shall not apply with respect to any of the following contracts:

(1) Any contract entered into by the Washington Convention Center Authority for preconstruction activities, project management, design, or construction.

(2) Any contract entered into by the District of Columbia Water and Sewer Authority established pursuant to the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, other than contracts for the sale or lease of the Blue Plains Wastewater Treatment Plant.

(3) At the option of the Council, any contract for a highway improvement project carried out under title 23, United States Code.

(Dec. 24, 1973, 87 Stat. 803, Pub. L. 93-198, title IV, § 451; Apr. 17, 1995, 109 Stat. 151, Pub. L. 104-8, § 304(a); Apr. 26, 1996, 110 Stat. 1321 210, Pub. L. 104-134, § 134; Sept. 9, 1996, 110 Stat. 2376, Pub. L. 104-194, § 144; Aug. 5, 1997, 111 Stat. 781, Pub. L. 105-33, § 11704(a).)

Cross references. — Proposals to contract out services in excess of \$1,000,000, review by the Council of the District of Columbia, see § 2-301.05d.

Water and Sewer Authority, approval of contract to privatize the Blue Plains Wastewater Treatment Plant, see § 34-2202.05.

Prior Codifications. — 1981 Ed., § 1-1130. 1973 Ed., § 1-825.

Emergency legislation. — For temporary approval of a multiyear contract with the United States of America for potable water from the Washington Aqueduct, see § 2 of the Multiyear Water Purchase Agreement Emergency Amendment Act of 1997 (D.C. Act 12-116, July 28, 1997, 44 DCR 4504).

References in text. — The “Water and

Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996,” referred to in (d)(2), is D.C. Law 11-111, which is codified primarily as § 34-2201.01 et seq.

Resolutions. — Resolution 13-166, the “Support Agreement No. 12, Amendment 4 (Authorization of Fiscal Year 1999 School Facility Capital Improvement Projects) Emergency Approval Resolution of 1999”, was approved effective June 22, 1999.

Resolution 13-172, the “\$3.1 Million Community Development Block Grant for the Greater Southeast Community Hospital Foundation Emergency Approval Resolution of 1999”, was approved effective June 22, 1999.

Editor’s notes. — 415 12th Street, N.W.

lease approval: For temporary approval of the lease agreement between the District of Columbia government and Laszlo N. Tauber, M.D., and Associates for 415 12th Street, N.W., and for exemption of the lease from the formal competitive procurement requirements applicable to leases where the District government will be the predominant user of the building, see §§ 2 and 3 of the 415 12th Street, N.W., Lease Conditional Approval Emergency Act of 1995 (D.C. Act 11-140, July 19, 1995, 42 DCR 5606).

800 Ninth Street, S.W. lease approval: For temporary approval of a lease agreement between the District of Columbia government and NBL Associates Limited Partnership for 800 Ninth Street, S.W., and for exemption of this lease from the formal competitive procurement requirements applicable to leases where the District will be the predominant user of the building, see §§ 2 and 3 of the 800 Ninth

Street, S.W., Lease Approval Emergency Act of 1995 (D.C. Act 11-141, October 6, 1995, 42 DCR 5704).

Applicability of § 304 of Pub. Law 104-8: Section 304(c) of Pub. Law 104-8, 109 Stat. 152, provided that the amendments made by that section shall apply to contracts made on or after the date of the enactment of the Act, April 17, 1995.

Application of § 11704(a) of Pub. L. 105-33: Section 11704(b) of Title XI of Pub. L. 105-33, 111 Stat. 786, the National Capital Revitalization and Self-Government Improvement Act of 1997, provided that the amendment made by § 11704(a) shall apply with respect to contracts entered into on or after the date of the enactment of this title. Title XI of Pub. L. 105-33 was approved August 5, 1997.

Definitions applicable: The definitions contained in § 1-202 apply to this section.

CASE NOTES

Amended contract.

Amended employment contract between District of Columbia Health and Hospitals Public Benefit Corporation (PBC) and its former employee was a multi-year contract that, by law, required approval of the District of Columbia Council, and thus, the amended contract was

invalid absent such Council approval, and arbitration award to former employee that was based upon severance package set forth in the amended contract violated public policy, warranting vacatur. *Fairman v. District of Columbia*, 934 A.2d 438, 2007 D.C. App. LEXIS 640 (2007).

§ 1-204.52. Annual budget for the Board of Education [Repealed].

Repealed.

(Dec. 24, 1973, 87 Stat. 803, Pub. L. 93-198, title IV, § 452; Apr. 17, 1995, 109 Stat. 116, Pub. L. 104-8, § 202(g)(2); Oct. 30, 2004, 118 Stat. 2228, Pub. L. 108-386, § 2; June 1, 2007, 121 Stat. 223, Pub. L. 110-33, § 1(a)(1).)

Prior Codifications. — 1981 Ed., § 31-104. 1973 Ed., § 31-104-1.

Emergency legislation. — For a proposed temporary (90 day) amendment of section, see § 352 of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For a proposed temporary (90 day) amendment of section, see § 352 of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

Effective date. — Section 9 of Pub. L. 108-386, 118 Stat. 2228, the 2004 District of Columbia Omnibus Authorization Act, provided: "The amendments made by this section shall take effect on the date of the enactment of this Act."

Editor's notes. — In sections 901 to 903 of Law 17-9 the Council of the District of Columbia requested that Congress repeal this section.

Section 353 of D.C. Law 15-39, as amended by D.C. Law 15-354, § 80, provided: "Section 352 of this subtitle shall take effect upon enactment into law by the United States Congress." Public Law 108-386 represents the enactment of § 352 of D.C. Law 15-39.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly,

and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Appropriations generally.
In general.

Appropriations generally.

Regardless of extent of responsibility for allocation of District of Columbia revenues that budgeting process assigns to District government's elected officials through their adoption of Budget Request Act, every District of Columbia Appropriations Act remains exclusively act of Congress that is subjected to same procedures that govern any appropriations measure, which is different and more active process than mere override oversight that is reserved for District's ordinary legislation. U.S. Const. Art. 1, § 10, cl. 1; D.C. Code 1981, §§ 1-233(c), 47-304. *District of Columbia v. American Fed'n of Gov't Employees*, 619 A.2d 77, 1993 D.C. App. LEXIS 13 (1993), writ of certiorari denied by 510 U.S. 933, 114 S. Ct. 347, 126 L. Ed. 2d 312, 1993 U.S. LEXIS 6594, 62 U.S.L.W. 3288, 144 L.R.R.M. (BNA) 2520 (1993).

Statute that limited power of mayor and council of District of Columbia concerning management of school board affairs did not constrain Congress in any way and, thus, statute did not prevent Congress from enacting appropriations legislation for District which imposed furlough days and barred within-grade pay increases and accrual of time in grade for workers in several government employee unions including school employee unions. *District of Columbia Appropriations Act, 1993*, *District of Columbia Supplemental Appropriations and Rescissions Act, 1992*, 106 Stat. 1422. *District of Columbia v. American Fed'n of Gov't Employees*, 619 A.2d 77, 1993 D.C. App. LEXIS 13 (1993), writ of certiorari denied by 510 U.S. 933, 114 S. Ct. 347, 126 L. Ed. 2d 312, 1993 U.S. LEXIS 6594, 62 U.S.L.W. 3288, 144 L.R.R.M. (BNA) 2520 (1993).

Neither the City Council nor the Congress, by an Appropriations Act, may intrude upon the Board of Education's management of its own internal affairs. *American Fed'n of Gov't Employees v. District of Columbia*, 120 WLR 2533 (Super. Ct. 1992).

Provision of the Self-Government Act that the mayor and city council may establish the maximum amount of funds which will be allocated to the Board of Education precludes mayor from unilaterally establishing a new maximum. D.C. Code 1981, § 31-104. *Barry v. Bush*, 581 A.2d 308, 1990 D.C. App. LEXIS 255 (1990).

In general.

Provision of the District of Columbia Self-Government Act that the mayor and council may establish the maximum amount of funds which may be allocated to the Board of Education does not apply only to the formulation of the budget before appropriation. D.C. Code 1981, § 31-104. *Barry v. Bush*, 581 A.2d 308, 1990 D.C. App. LEXIS 255 (1990).

Provision of the District of Columbia Self-Government Act that the mayor and council may establish the maximum amount of funds which may be allocated to the Board of Education does not apply only to the formulation of the budget before appropriation. D.C. Code 1981, § 31-104. *Barry v. Bush*, 581 A.2d 308, 1990 D.C. App. LEXIS 255 (1990).

§ 1-204.53. Reductions in budgets of independent agencies.

(a) In accordance with subsection (b) of this section and except as provided in subsection (c) of this section, the Mayor may reduce amounts appropriated or otherwise made available to independent agencies of the District of Columbia (including the Board of Education) for a fiscal year if the Mayor determines that it is necessary to reduce such amounts to balance the District's budget for the fiscal year.

(b)(1) The Mayor may not make any reduction pursuant to subsection (a) of this section unless the Mayor submits a proposal to make such a reduction to the Council and the Council approves the proposal.

(2) A proposal submitted by the Mayor under paragraph (1) of this subsection shall be deemed to be approved by the Council:

(A) If no member of the Council files a written objection to the proposal with the Secretary of the Council before the expiration of the 10-day period that begins on the date the Mayor submits the proposal; or

(B) If a member of the Council files such a written objection during the period described in subparagraph (A) of this paragraph, if the Council does not disapprove the proposal prior to the expiration of the 45-day period that begins on the date the member files the written objection.

(3) The periods described in subparagraphs (A) and (B) of paragraph (2) of this subsection shall not include any days which are days of recess for the Council (according to the Council's rules).

(c) Subsection (a) of this section shall not apply to amounts appropriated or otherwise made available to the Council, the District of Columbia Financial Responsibility and Management Assistance Authority established under § 47-391.01(a), or the District of Columbia Water and Sewer Authority established pursuant to § 34-2202.02.

(Dec. 24, 1973, 87 Stat. 803, Pub. L. 93-198, title IV, § 453, as added Aug. 17, 1991, Pub. L. 102-106, 105 Stat. 539, § 2; Apr. 17, 1995, 109 Stat. 106, Pub. L. 104-8, § 106(a)(4); Aug. 6, 1996, 110 Stat. 1698, Pub. L. 104-184, § 4(b); Aug. 5, 1997, 111 Stat. 753, Pub. L. 105-33, § 11243(d); Nov. 19, 1997, 111 Stat. 2187, Pub. L. 105-100, § 157(e)(1).)

Prior Codifications. — 1981 Ed., § 47-304.1.

1981 Ed., § 31-104.1.

Effective date. — Section 157(e)(1) of Pub. L. 105-100, 111 Stat. 2187, the District of Columbia Appropriations Act, 1998, provided that the amendment is effective as if included in the enactment of Pub. L. 105-33, 111 Stat. 251, the Balanced Budget Act of 1997.

References in text. — The "Council's rules," referred to in (b)(3), are the Rules of Organization and Procedure for the Council of the District of Columbia which are set out in the supplement as a note following § 1-204.04.

Editor's notes. — Enactment upon adoption

of federal legislation: Section 4 of D.C. Law 11-254 provided that "§§ 47-101, 47-117, 47-130, 47-301, 47-302, 47-303, 47-304, 47-304.1, 47-305, 47-310, 47-312, 47-317.1 through 47-317.6, 47-321 through 47-325, 47-327 through 47-331, and 47-332 through 47-334 of Title 47 §§ 1-204.41, 1-204.55, 1-204.50, 1-204.42, 1-204.43, 1-204.44, 1-204.46, 1-204.53, 1-204.47, 1-204.48, 1-204.49, 1-204.24a through 1-204.24e, 47-317.06, 1-204.61 through 1-204.65, 1-204.71 through 1-204.75, 1-204.81, 1-204.85, 1-204.86 and 1-204.90, 2001 Ed. of the District of Columbia Code shall be enacted as part of Title 47 upon the adoption by Congress of legislation so enacting these sections."

Subpart 2—Audits and Accountability Requirements.

§ 1-204.55. District of Columbia Auditor.

(a) There is established for the District of Columbia the Office of District of Columbia Auditor who shall be appointed by the Chairman, subject to the approval of a majority of the Council. The District of Columbia Auditor shall serve for a term of 6 years and shall be paid at a rate of compensation as may be established from time to time by the Council.

(b) The District of Columbia Auditor shall each year conduct a thorough audit of the accounts and operations of the government of the District in accordance with such principles and procedures and under such rules and regulations as he may prescribe. In the determination of the auditing procedures to be followed and the extent of the examination of vouchers and other documents and records, the District of Columbia Auditor shall give due regard to generally accepted principles of auditing including the effectiveness of the

accounting organizations and systems, internal audit and control, and related administrative practices.

(c) The District of Columbia Auditor shall have access to all books, accounts, records, reports, findings and all other papers, things, or property belonging to or in use by any department, agency, or other instrumentality of the District government and necessary to facilitate the audit.

(d) The District of Columbia Auditor shall submit his audit reports to the Congress, the Mayor, and the Council. Such reports shall set forth the scope of the audits conducted by him and shall include such comments and information as the District of Columbia Auditor may deem necessary to keep the Congress, the Mayor, and the Council informed of the operations to which the reports relate, together with such recommendations with respect thereto as he may deem advisable.

(e) The Council shall make such report, together with such other material as it deems pertinent thereto, available for public inspection.

(f) The Mayor shall state in writing to the Council, within an appropriate time, what action he has taken to effectuate the recommendations made by the District of Columbia Auditor in his reports.

(g) This section shall not apply to the District of Columbia Courts or the accounts and operations thereof.

(Dec. 24, 1973, 87 Stat. 803, Pub. L. 93-198, title IV, § 455; Aug. 5, 1997, 111 Stat. 754, Pub. L. 105-33, § 11244(a).)

Cross references. — Advisory neighborhood commissions, annual allocations, powers and duties, see § 1-309.13.

Boxing and wrestling commission, administration, see § 3-607.

Mental health services client enterprise program, establishment, see § 44-921.

Organization for personnel management, rules and regulations, implementation, see § 1-604.06.

Public school of law, access to records, see § 38-1205.09.

Washington convention center authority, audit of accounts and operations, see § 10-1203.05.

Section references. — This section is referred to in §§ 1-204.24c, and 1-207.36.

Prior Codifications. — 1981 Ed., § 47-117. 1973 Ed., § 47-120.

Emergency legislation. — For temporary (90 day) addition, see §§ 2 to 4 of District of Columbia Auditor Subpoena and Oath Authority Emergency Act of 2004 (D.C. Act 15-317, January 28, 2004, 51 DCR 1555).

Editor's notes. — Increase of rate of compensation for District of Columbia Auditor approved: Pursuant to Resolution 8-69, the "Rate

of Compensation for the District of Columbia Auditor Resolution of 1989," effective June 27, 1989, the Council authorized an increase in the rate of compensation authorized for the District of Columbia Auditor from the rate as may be provided from time to time for grade 16 of the District Schedule to the rate as may be established from time to time for grade 17 of the District Schedule.

Enactment upon adoption of federal legislation: Section 4 of D.C. Law 11-254 provided that "§§ 47-101, 47-117, 47-130, 47-301, 47-302, 47-303, 47-304, 47-304.1, 47-305, 47-310, 47-312, 47-317.1 through 47-317.6, 47-321 through 47-325, 47-327 through 47-331, and 47-332 through 47-334 of Title 47 §§ 1-204.41, 1-204.55, 1-204.50, 1-204.42, 1-204.43, 1-204.44, 1-204.46, 1-204.53, 1-204.47, 1-204.48, 1-204.49, 1-204.24a through 1-204.24e, 47-317.06, 1-204.61 through 1-204.65, 1-204.71 through 1-204.75, 1-204.81, 1-204.85, 1-204.86 and 1-204.90, 2001 Ed. of the District of Columbia Code shall be enacted as part of Title 47 upon the adoption by Congress of legislation so enacting these sections."

Definitions applicable: The definitions in § 1-201.03 apply to this section.

§ 1-204.56a. Performance and accountability plan.

(a) *Submission of annual plan.* — Concurrent with the submission of the

District of Columbia budget to Congress each year (beginning with 2001), the Mayor shall develop and submit to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, the Committees on Appropriations of the House of Representatives and the Senate, and the Comptroller General a performance accountability plan for all departments, agencies, and programs of the government of the District of Columbia for the subsequent fiscal year.

(b) *Contents of plan.* — The performance accountability plan for a fiscal year shall contain the following:

(1) A statement of measurable, objective performance goals established for all significant activities of the government of the District of Columbia during the fiscal year (including activities funded in whole or in part by the District but performed in whole or in part by some other public or private entity);

(2) A description of the measures of performance to be used in determining whether the government has met the goals established under paragraph (1) of this subsection with respect to an activity for a fiscal year. Such measures shall analyze the quantity and quality of the activities involved, and shall include measures of program outcomes and results; and

(3) The title of the District of Columbia management employee most directly responsible for the achievement of each goal and the title of such employee's immediate supervisor or superior.

(c) *Description of activities subject to court order.* — In addition to the material included in the performance accountability plan for a fiscal year under subsection (b) of this section, the plan shall include a description of the activities of the government of the District of Columbia that are subject to a court order during the fiscal year and the requirements placed on such activities by the court order.

(Dec. 24, 1973, 87 Stat. 774, Pub. L. 93-198, § 456(a), as added Oct. 19, 1994, 108 Stat. 3488, Pub. L. 103-373, § 3(a)(2); Nov. 19, 1997, 111 Stat. 2174, Pub. L. 105-100, § 130; Nov. 29, 1999, 113 Stat. 1531, Pub. L. 106-113, § 169(1); Nov. 6, 2000, 114 Stat. 1940, Pub. L. 106-449, § 1(1).)

Section references. — This section is referred to in § 1-204.56b.

Prior Codifications. — 1981 Ed., § 47-231.

Effect of amendments. — Public Law 106-113 in subsec. (a), struck "District of Columbia Financial Responsibility and Management Assistance Authority" and inserted "Mayor".

Pub. L. 106-449, in subsec. (a), substituted

"Concurrent with the submission of the District of Columbia budget to Congress each year (beginning with 2001)" for "Not later than March 1 of each year (beginning with 1998)"; and, in subsec. (b)(1), deleted "that describe an acceptable level of performance by the government and a superior level of performance by the government" following "private entity".

§ 1-204.56b. Performance accountability report.

(a) *Submission of report.* — Not later than March 1 of each year (beginning with 2001), the Mayor shall develop and submit to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, the Committees on Appropriations of the House of Representatives and the Senate, and the Comptroller

General a performance accountability report on activities of the government of the District of Columbia during the fiscal year ending on the previous September 30.

(b) *Contents of report.* — The performance accountability report for a fiscal year shall contain the following:

(1) For each goal of the performance accountability plan submitted under § 1-204.56a for the year, a statement of the actual level of performance achieved compared to the stated goal;

(2) The title of the District of Columbia management employee most directly responsible for the achievement of each goal and the title of such employee's immediate supervisor or superior; and

(3) A statement of the status of any court orders applicable to the government of the District of Columbia during the year and the steps taken by the government to comply with such orders.

(c) *Evaluation of report.* — The Comptroller General, in consultation with the Director of the Office of Management and Budget, shall review and evaluate each performance accountability report submitted under this subsection and not later than April 15 of each year shall submit comments on such report to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Committees on Appropriations of the House of Representatives and the Senate.

(Dec. 24, 1973, 87 Stat. 774, Pub. L. 93-198, § 456(b), as added Oct. 19, 1994, 108 Stat. 3488, Pub. L. 103-373, § 3(a)(2); Nov. 19, 1997, 111 Stat. 2174, Pub. L. 105-100, § 130; Nov. 29, 1999, 113 Stat. 1531, Pub. L. 106-113, § 169(2); Nov. 6, 2000, 114 Stat. 1940, Pub. L. 106-449, § 1(2).)

Prior Codifications. — 1981 Ed., § 47-232.

Effect of amendments. — Public Law 106-113 in subsec. (a), struck "Authority" and inserted "Mayor".

Pub. L. 106-449, in subsec. (a), substituted "2001" for "1999"; and, in subsec. (b)(1), deleted "for an acceptable level of performance and the goal for a superior level of performance" following "stated goal".

Editor's Note Public Law 106-449 purported

to delete the following language from subsection(b)(A) of this section: "for an acceptable level of performance by the government and a superior level of performance by the government". In order to carry out the perceived intent of Congress, following language was deleted from the same subsection: "for an acceptable level of performance and the goal for a superior level of performance."

§ 1-204.56c. Financial plan and report.

(a) *Development and submission.* — Not later than March 1 of each year (beginning with 1997), the Chief Financial Officer shall develop and submit to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, the Committees on Appropriations of the House of Representatives and the Senate, and the Comptroller General a 5-year financial plan for the government of the District of Columbia that contains a description of the steps the government will take to eliminate any differences between expenditures from, and revenues attributable to, each fund of the District of Columbia during the first 5 fiscal years beginning after the submission of the plan.

(b) *Report on compliance.* —

(1) *Submission of report.* — Not later than March 1 of every year (beginning with 1999), the Chief Financial Officer shall submit a report to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, the Committees on Appropriations of the House of Representatives and the Senate, the Comptroller General, and the Director of the Congressional Budget Office on the extent to which the government of the District of Columbia was in compliance during the preceding fiscal year with the applicable requirements of the financial accountability plan submitted for such fiscal year under this section.

(2) *Evaluation of report.* — The Comptroller General, in consultation with the Director of the Congressional Budget Office, shall review and evaluate the financial accountability compliance report submitted under paragraph (1) of this subsection and not later than April 15 of each year shall submit comments on such report to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Committees on Appropriations of the House of Representatives and the Senate.

(Dec. 24, 1973, 87 Stat. 774, Pub. L. 93-198, § 456(c), as added Oct. 19, 1994, 108 Stat. 3488, Pub. L. 103-373, § 3(a)(2); Nov. 19, 1997, 111 Stat. 2174, Pub. L. 105-100, § 130.)

Prior Codifications. — 1981 Ed., § 47-233.

§ 1-204.56d. Quarterly financial reports.

(a) *Submission of quarterly financial reports.* — Not later than fifteen days after the end of every calendar quarter (beginning with a report for the quarter beginning October 1, 1997), the Chief Financial Officer shall submit to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Subcommittees on the District of Columbia of the Committees on Appropriations of the House of Representatives and the Senate, a report on the financial and budgetary status of the government of the District of Columbia for the previous quarter.

(b) *Contents of report.* — Each quarterly financial report submitted under subsection (a) of this section shall include the following information:

(1) A comparison of actual to forecasted cash receipts and disbursements for each month of the quarter, as presented in the District's fiscal year consolidated cash forecast which shall be supported and accompanied by cash forecasts for the general fund and each of the District government's other funds other than the capital projects fund and trust and agency funds;

(2) A projection of the remaining months cash forecast for that fiscal year;

(3) Explanations of (i) the differences between actual and forecasted cash amounts for each of the months in the quarter, and (ii) any changes in the remaining months forecast as compared to the original forecast for such months of that fiscal year;

(4) The effect of such changes, actual and projected, on the total cash balance of the remaining months and for the fiscal year;

(5) Explanations of the impact on meeting the budget, how the results may be reflected in a supplemental budget request, or how other policy decisions may be necessary which may require the agencies to reduce expenditures in other areas;

(6) An aging of the outstanding receivables and payables, with an explanation of how they are reflected in the forecast of cash receipts and disbursements; and

(7) For each department or agency, the actual number of full-time equivalent positions, the actual number of full-time employees, the actual number of part-time employees, and the actual number of temporary employees, together with the source of funding for each such category of positions and employees.

(8) A statement of the balance of each account held by the District of Columbia Financial Responsibility and Management Assistance Authority as of the end of the quarter, together with a description of the activities within each such account during the quarter based on information supplied by the Authority.

(Dec. 24, 1973, 87 Stat. 774, Pub. L. 93-198, § 456(d), as added Oct. 19, 1994, 108 Stat. 3488, Pub. L. 103-373, § 3(a)(2); Nov. 19, 1997, 111 Stat. 2174, Pub. L. 105-100, § 130; Oct. 21, 1998, 112 Stat. 2681, Pub. L. 105-277, § 165.)

Prior Codifications. — 1981 Ed., § 47-234.

§ 1-204.56e. Submission of Reports to District of Columbia Financial Responsibility and Assistance Authority.

In the case of any report submitted by the Mayor under this subpart for a fiscal year (or any quarter of a fiscal year) which is a control year under the District of Columbia Financial Responsibility and Management Assistance Act of 1995, the Mayor shall submit the report to the District of Columbia Financial Responsibility and Management Assistance Authority established under § 47-391.01(a) in addition to any other individual to whom the Mayor is required to submit the report under this subpart.

(Dec. 24, 1973, 87 Stat. 774, Pub. L. 93-198, § 456(e), as added Apr. 17, 1995, 109 Stat. 140, Pub. L. 104-8, § 224(b)(2).)

Prior Codifications. — 1981 Ed., § 47-235.

References in text. — The District of Columbia Financial Responsibility and Management Assistance Act of 1995, referred to in this

section, is Pub. Law 104-8, 109 Stat. 97, codified primarily as subchapters I-A and VII of Chapter 3 of this title.

Part E

BORROWING.

Subpart 1—Borrowing.

§ 1-204.61. Districts' authority to issue and redeem general obligation bonds for capital projects.

(a)(1) Subject to the limitations in § 1-206.03(b), the District may incur indebtedness by issuing general obligation bonds to refund indebtedness of the District at any time outstanding, to finance the outstanding accumulated operating deficit of the general fund of the District of \$331,589,000, existing as of September 30, 1990, to finance or refund the outstanding accumulated operating deficit of the general fund of the District of \$500,000,000, existing as of September 30, 1997, and to provide for the payment of the cost of acquiring or undertaking its various capital projects. Such bonds shall bear interest, payable on such dates, at such rate or rates and at such maturities as the Mayor, subject to the provisions of § 1-204.62, may from time to time determine to be necessary to make such bonds marketable.

(2) The District may not issue any general obligation bonds to finance the operating deficit existing as of September 30, 1990 described in paragraph (1) of this subsection after September 30, 1992.

(b) The District may reserve the right to redeem any or all of its obligations before maturity in such manner and at such price as may be fixed by the Mayor prior to the issuance of such obligations.

(Dec. 24, 1973, 87 Stat. 804, Pub. L. 93-198, title IV, § 461; Dec. 23, 1981, 95 Stat. 1493, Pub. L. 97-105, § 4; Aug. 17, 1991, 105 Stat. 540, Pub. L. 102-106, § 4; Aug. 5, 1997, 111 Stat. 768, Pub. L. 105-33, § 11405.)

Cross references. — Sale of public lands, expenses and proceeds of sale; board of education real property improvement and maintenance fund, see § 10-802.

Taxation and fiscal affairs, intermediate-term advances for liquidation of deficit, see § 47-3401.01.

Section references. — This section is referred to in §§ 1-204.62, 1-204.65, 1-204.67, 1-204.75, 1-204.81, 1-204.82, 1-204.83, 47-392.04, 47-392.24, and

Prior Codifications. — 1981 Ed., § 47-321. 1973 Ed., § 47-241.

Emergency legislation. — For temporary (90 day) amendment of section, see § 4(d) of the Redevelopment Land Agency Disposition Review Congressional Review Emergency Act of 2000 (D.C. Act 13-524, January 11, 2001, 48 DCR 624).

For temporary (90 day) authorization for the issuance of general obligation bonds and bond anticipation notes, see § 2 of General Obliga-

tion Bond and Bond Anticipation Notes for Fiscal Years 2002-2007 Authorization Emergency Act of 2002 (D.C. Act 14-418, July 17, 2002, 49 DCR 7392).

For temporary (90 day) authorization for the issuance of general obligation bonds and bond anticipation notes, see §§ 2 to 21 of General Obligation Bonds and Bond Anticipation Notes for Fiscal Years 2002-2007 Authorization Congressional Review Emergency Act of 2002 (D.C. Act 14-508, October 23, 2002, 49 DCR 10222).

Delegation of Authority. — Delegation of contracting authority, see Mayor's Order 91-92, June 7, 1991.

Delegation of authority under D.C. Law 9-251, the "General Obligation Bond Act of 1992", see Mayor's Order 93-45, April 22, 1993.

Delegation of authority under D.C. Act 11-404, the "General Obligation Bond Act of 1996", see Mayor's Order 96-146, October 7,

Editor's notes. — Enactment upon adoption of federal legislation: Section 4 of D.C. Law

11-254 provided that “§§ 47-101, 47-117, 47-130, 47-301, 47-302, 47-303, 47-304, 47-304.1, 47-305, 47-310, 47-312, 47-317.1 through 47-317.6, 47-321 through 47-325, 47-327 through 47-331, and 47-332 through 47-334 of Title 47 §§ 1-204.41, 1-204.55, 1-204.50, 1-204.42, 1-204.43, 1-204.44, 1-204.46, 1-204.53, 1-204.47, 1-204.48, 1-204.49, 1-204.24a through 1-204.24e, 47-317.06, 1-204.61 through 1-204.65, 1-204.71 through 1-204.75, 1-204.81, 1-204.85, 1-204.86 and 1-204.90, 2001 Ed. of the District of Columbia Code shall be enacted as part of Title 47 upon the adoption by Congress of legislation so enacting these sections.”

General Obligation Bond 1996 Issuance Authorization Emergency Resolution of 1996: Pursuant to Resolution 11-545, effective October 1, 1996, the Council approved, on an emergency basis, authorization for the borrowing of funds by the Mayor through the issuance and sale of general obligation bonds.

Effective Date of General Obligation Bond Act of 1998: Section 148 of Pub. L. 105-100, 111 Stat. 2181, the District of Columbia Appropriations Act, 1998, provided that, notwithstanding § 602(c)(1) of the District of Columbia Home Rule Act (D.C. Code, § 1-206.02(c)(1)), General Obligation Bond Act of 1998 (D.C. Law 12-41), if enacted by the Council of the District of Columbia and approved by the District of Columbia Financial Responsibility and Management Assistance Authority, shall take effect on the date of such approval or the date of the enactment of this Act, whichever is later. Both Pub. L. 105-100 and D.C. Law 12-41 were approved on November 19, 1997.

General obligation bonds authorized: D.C. Law 12-41, effective November 19, 1997, authorized the issuance of general obligation bonds of

the District of Columbia for the purpose of financing certain capital projects and the refunding of certain capital indebtedness of the District of Columbia.

General Obligation Bond Issuance 1998 Additional Authorization Emergency Resolution of 1998: Pursuant to Resolution 12-441, effective March 31, 1998, the Council authorized the borrowing of funds by the Mayor through the issuance and sale of general obligation bonds.

General Obligation Bonds Authorized.—D.C. Law 13-22, the “General Obligation Bonds and Bond Anticipation Notes for Fiscal Years 1999-2004 Authorization Act of 1999” authorizes the issuance of general obligation bond anticipation notes of the District of Columbia for the purposes of financing certain capital projects and the refunding of certain capital indebtedness of the District during fiscal years 1999-2004.

Definitions applicable: The definitions in § 1-201.03 apply to this subchapter.

General Obligation Bonds Authorized: D.C. Law 14-214, effective March 25, 2003, authorized the issuance of general obligation bonds and general obligation bond anticipation notes of the District of Columbia for the purposes of financing certain capital projects and the refunding of certain capital indebtedness of the District of Columbia during fiscal years 2002-2007.

General Obligation Bonds Authorized: D.C. Law 16-212, effective March 6, 2007, authorized the issuance of general obligation bonds and general obligation bond anticipation notes of the District of Columbia for the purposes of financing certain capital projects and the refunding of certain capital indebtedness of the District of Columbia during fiscal years 2007-2012.

§ 1-204.62. Contents of borrowing legislation and elections on issuing general obligation bonds.

(a) The Council may by act authorize the issuance of general obligation bonds for the purposes specified in § 1-204.61. Such an Act shall contain, at least, provisions:

(1) Briefly describing the projects or categories of projects to be financed by the Act;

(2) Identifying the act authorizing each such project or category of projects;

(3) Setting forth the maximum amount of the principal of the indebtedness which may be incurred for the projects to be financed;

(4) Setting forth the maximum rate of interest to be paid on such indebtedness;

(5) Setting forth the maximum allowable maturity for the issue and the maximum debt service payable in any year; and

(6) Setting forth, in the event that the Council determines in its discretion

to submit the question of issuing such bonds to a vote of the qualified voters of the District, the manner of holding such election, the date of such election, the manner of voting for or against the incurring of such indebtedness, and the form of ballot to be used at such election.

(b) Any election held on the question of issuing general obligation bonds must be held before the act authorizing the issuance of such bonds is transmitted to the Speaker of the House of Representatives and the President of the Senate pursuant to § 1-206.02(c).

(c) Notwithstanding § 1-206.02(c)(1), the provisions required by paragraph (6) of subsection (a) of this section to be included in any act authorizing the issuance of general obligation bonds shall take effect on the date of the enactment of such act.

(Dec. 24, 1973, 87 Stat. 804, Pub. L. 93-198, title IV, § 462; Aug. 29, 1974, 88 Stat. 793, Pub. L. 93-395, § 1(4); Dec. 23, 1981, 95 Stat. 1493, Pub. L. 97-105, § 5; Aug. 5, 1997, 111 Stat. 769, Pub. L. 105-33, § 11503.)

Cross references. — Council, limitations on authority, see § 1-206.02.

Section references. — This section is referred to in §§ 1-204.61 and 1-204.63.

Prior Codifications. — 1981 Ed., § 47-322.

Editor's notes. — Enactment upon adoption of federal legislation: Section 4 of D.C. Law 11-254 provided that "§§ 47-101, 47-117, 47-130, 47-301, 47-302, 47-303, 47-304, 47-304.1, 47-305, 47-310, 47-312, 47-317.1 through 47-317.6, 47-321 through 47-325, 47-327 through

47-331, and 47-332 through 47-334 of Title 47 §§ 1-204.41, 1-204.55, 1-204.50, 1-204.42, 1-204.43, 1-204.44, 1-204.46, 1-204.53, 1-204.47, 1-204.48, 1-204.49, 1-204.24a through 1-204.24e, 47-317.06, 1-204.61 through 1-204.65, 1-204.71 through 1-204.75, 1-204.81, 1-204.85, 1-204.86 and 1-204.90, 2001 Ed. of the District of Columbia Code shall be enacted as part of Title 47 upon the adoption by Congress of legislation so enacting these sections."

§ 1-204.63. General obligation bonds.

(a) After each act of the Council of the District of Columbia under § 1-204.62(a) authorizing the issuance of general obligation bonds has taken effect, the Mayor shall publish such act at least once in at least 1 newspaper of general circulation within the District together with a notice that such act has taken effect. Each such notice shall be in substantially the following form:

NOTICE

The following act of the Council of the District of Columbia (published with this notice) authorizing the issuance of general obligation bonds has taken effect. As provided in the District of Columbia Home Rule Act, the time within which a suit, action, or proceeding questioning the validity of such bonds may be commenced expires at the end of the 20-day period beginning on the date of the first publication of this notice.

.....

Mayor

(b) Neither the failure to publish the notice provided for in subsection (a) of this section nor any error in any publication of such notice shall impair the effectiveness of the act of the Council authorizing the issuance of such bonds or the validity of any bond issued pursuant to such act.

(Dec. 24, 1973, 87 Stat. 804, Pub. L. 93-198, title IV, § 463; Dec. 23, 1981, 95 Stat. 1493, Pub. L. 97-105, § 6.)

Section references. — This section is referred to in § 1-204.64.

Prior Codifications. — 1981 Ed., § 47-323. 1973 Ed., § 47-243.

References in text. — The District of Columbia Self-Government and Governmental Reorganization Act, referred to in this section, is 87 Stat. 774, Pub. L. 93-198, approved December 24, 1973.

Editor's notes. — Enactment upon adoption of federal legislation: Section 4 of D.C. Law 11-254 provided that "§§ 47-101, 47-117, 47-130, 47-301, 47-302, 47-303, 47-304, 47-304.1,

47-305, 47-310, 47-312, 47-317.1 through 47-317.6, 47-321 through 47-325, 47-327 through 47-331, and 47-332 through 47-334 of Title 47 §§ 1-204.41, 1-204.55, 1-204.50, 1-204.42, 1-204.43, 1-204.44, 1-204.46, 1-204.53, 1-204.47, 1-204.48, 1-204.49, 1-204.24a through 1-204.24e, 47-317.06, 1-204.61 through 1-204.65, 1-204.71 through 1-204.75, 1-204.81, 1-204.85, 1-204.86 and 1-204.90, 2001 Ed. of the District of Columbia Code shall be enacted as part of Title 47 upon the adoption by Congress of legislation so enacting these sections."

§ 1-204.64. Short period of limitation.

(a) At the end of the 20-day period beginning on the date of the first publication pursuant to the notice in § 1-204.63(a) that an act authorizing the issuance of general obligation bonds has taken effect:

(1) Any recital or statement of fact contained in such act or in the preamble or title of such act shall be deemed to be true for the purpose of determining the validity of the bonds authorized by such act, and the District and all others interested shall be estopped from denying any such recital or statement of fact; and

(2) Such act, and all proceedings in connection with the authorization of the issuance of such bonds including any election held on the question of issuing such bonds, shall be deemed to have been duly and regularly taken, passed, and done by the District, in compliance with this chapter and all other applicable laws, for the purpose of determining the validity of such act and proceedings; and no court shall have jurisdiction in any suit, action, or proceeding questioning the validity of such act or proceedings except in a suit, action, or proceeding commenced before the end of such 20-day period.

(b) At the end of the 20-day period beginning on the date of the first publication pursuant to the notice in § 1-204.63(a) that an act authorizing the issuance of general obligation bonds has taken effect, no court shall have jurisdiction in any suit, action, or proceeding questioning the validity of any general obligation bond issued pursuant to such act if:

(1) Such general obligation bond was purchased in good faith and for fair value; and

(2) Such general obligation bond contains substantially the following statement which shall bind the District of Columbia:

"It is hereby certified and recited that all conditions, acts, and things required by the District of Columbia Home Rule Act and other applicable laws to exist, to have happened, and to have been performed precedent to and in the issuance of this bond exist, have happened, and have been performed and that the issue of bonds, of which this is one, together with all other indebtedness of the District of Columbia, is within every debt and other limit prescribed by law."

(Dec. 24, 1973, 87 Stat. 805, Pub. L. 93-198, title IV, § 464; Aug. 14, 1974, 88 Stat. 458, Pub. L. 93-376, title III, § 306(a); Dec. 23, 1981, 95 Stat. 1493, Pub. L. 97-105, § 7.)

Prior Codifications. — 1981 Ed., § 47-324. 1973 Ed., § 47-244.

Editor's notes. — Enactment upon adoption of federal legislation: Section 4 of D.C. Law 11-254 provided that "§§ 47-101, 47-117, 47-130, 47-301, 47-302, 47-303, 47-304, 47-304.1, 47-305, 47-310, 47-312, 47-317.1 through 47-317.6, 47-321 through 47-325, 47-327 through 47-331, and 47-332 through 47-334 of Title 47

§§ 1-204.41, 1-204.55, 1-204.50, 1-204.42, 1-204.43, 1-204.44, 1-204.46, 1-204.53, 1-204.47, 1-204.48, 1-204.49, 1-204.24a through 1-204.24e, 47-317.06, 1-204.61 through 1-204.65, 1-204.71 through 1-204.75, 1-204.81, 1-204.85, 1-204.86 and 1-204.90, 2001 Ed. of the District of Columbia Code shall be enacted as part of Title 47 upon the adoption by Congress of legislation so enacting these sections."

§ 1-204.65. Issuance of general obligation bonds.

(a) After an act of the Council authorizing the issuance of general obligation bonds under § 1-204.61(a) takes effect, the Mayor may issue such general obligation bonds as authorized by such act of the Council. An issue of general obligation bonds may be all or any part of the aggregate principal amount of bonds authorized by such act.

(b) The principal amount of the general obligation bonds of each issue shall be payable in annual installments beginning not more than 3 years after the date of such bonds and ending not more than 30 years after such date.

(c) The general obligation bonds of each issue shall be executed by the manual or facsimile signature of such officials as may be designated to sign such bonds by the act of the Council authorizing the issuance of the bonds, except that at least 1 such signature shall be manual. Coupons attached to the bonds shall be authenticated by the facsimile signature of the Mayor unless the Council provides otherwise.

(Dec. 24, 1973, 87 Stat. 805, Pub. L. 93-198, title IV, § 465; Aug. 29, 1974, 88 Stat. 793, Pub. L. 93-395, § 1(5); Dec. 23, 1981, 95 Stat. 1493, Pub. L. 97-105, § 8.)

Prior Codifications. — 1981 Ed., § 47-325. 1973 Ed., § 47-245.

§ 1-204.66. Public or private sale.

General obligation bonds issued under this part may be sold at a private sale on a negotiated basis (in such manner as the Mayor may determine to be in the public interest), or may be sold at public sale upon sealed proposals after publication of a notice of such public sale at least once not less than 10 days prior to the date fixed for sale in a daily newspaper carrying municipal bond notices and devoted primarily to financial news or to the subject of State and municipal bonds published in the city of New York, New York, and in one or more newspapers of general circulation published in the District. Such notice of public sale shall state, among other things, that no proposal shall be considered unless there is deposited with the District as a down payment a certified check, cashier's check, or surety for an amount equal to at least 2% of

the par amount of general obligation bonds bid for, and the Mayor shall reserve the right to reject any and all bids.

(Dec. 24, 1973, 87 Stat. 806, Pub. L. 93-198, title IV, § 466; Aug. 29, 1974, 88 Stat. 793, Pub. L. 93-395, § 1(6); Dec. 23, 1981, 95 Stat. 1493, Pub. L. 97-105, § 9; Oct. 12, 1984, 98 Stat. 1974, Pub. L. 98-473, § 131(a); Dec. 19, 1985, 99 Stat. 1185, Pub. L. 99-190, § 101(c); Oct. 30, 1986, 100 Stat. 3341-180, Pub. L. 99-591, § 131; Dec. 22, 1987, 101 Stat. 1329, Pub. L. 100-202, § 1(c); Nov. 21, 1989, 103 Stat. 1280, Pub. L. 101-168, § 129; Nov. 5, 1990, 104 Stat. 2237, Pub. L. 101-518, § 129; Oct. 1, 1991, 105 Stat. 569, Pub. L. 102-111, § 125; Oct. 5, 1992, 106 Stat. 1433, Pub. L. 102-382, § 125; Oct. 29, 1993, 107 Stat. 1347, Pub. L. 103-127, § 124; Sept. 30, 1994, 108 Stat. 2586, Pub. L. 103-334, § 124; Aug. 5, 1997, 111 Stat. 769, Pub. L. 105-33, § 11504.)

Prior Codifications. — 1981 Ed., § 47-326.
1973 Ed., § 47-246.

Editor's notes. — Applicability of amendments: Section 131(k) of Public Law 98-473 provided that amendments made by this section shall not be applicable with respect to any law which was passed by the Council prior to the date of enactment of this act, and such laws are deemed valid, in accordance with the provisions thereof notwithstanding such amendments, and any previous act of the Council which had been disapproved by the Congress pursuant to section 602(c)(1) or section 602(c)(2) is deemed null and void. Public Law 98-473 was approved October 12, 1984.

Effective period of § 131 of Public Law 98-473: Section 131(n) of Public Law 98-473 provided that the provisions of this section shall be effective hereafter without limitation as to fis-

cal year, notwithstanding any other provision of the joint resolution. Public Law 98-473 was approved October 12, 1984.

Enactment upon adoption of federal legislation: Section 4 of D.C. Law 11-254 provided that "§§ 47-101, 47-117, 47-130, 47-301, 47-302, 47-303, 47-304, 47-304.1, 47-305, 47-310, 47-312, 47-317.1 through 47-317.6, 47-321 through 47-325, 47-327 through 47-331, and 47-332 through 47-334 of Title 47 §§ 1-204.41, 1-204.55, 1-204.50, 1-204.42, 1-204.43, 1-204.44, 1-204.46, 1-204.53, 1-204.47, 1-204.48, 1-204.49, 1-204.24a through 1-204.24e, 47-317.06, 1-204.61 through 1-204.65, 1-204.71 through 1-204.75, 1-204.81, 1-204.85, 1-204.86 and 1-204.90, 2001 Ed. of the District of Columbia Code shall be enacted as part of Title 47 upon the adoption by Congress of legislation so enacting these sections."

§ 1-204.67. Authority to create security interests in District revenues.

(a) *In general.* — An act of the Council authorizing the issuance of general obligation bonds or notes under § 1-204.61(a), § 1-204.71(a), § 1-204.72(a), or § 1-204.75(a) may create a security interest in any District revenues as additional security for the payment of the bonds or notes authorized by such act.

(b) *Contents of acts.* — Any such act creating a security interest in District revenues may contain provisions (which may be part of the contract with the holders of such bonds or notes):

(1) Describing the particular District revenues which are subject to such security interest;

(2) Creating a reasonably required debt service reserve fund or any other special fund;

(3) Authorizing the Mayor of the District to execute a trust indenture securing the bonds or notes;

(4) Vesting in the trustee under such a trust indenture such properties,

rights, powers, and duties in trust as may be necessary, convenient, or desirable;

(5) Authorizing the Mayor of the District to enter into and amend agreements concerning:

(A) The custody, collection, use, disposition, security, investment, and payment of the proceeds of the bonds or notes and the District revenues which are subject to such security interest; and

(B) The doing of any act (or the refraining from doing any act) that the District would have the right to do in the absence of such an agreement;

(6) Prescribing the remedies of the holders of the bonds or notes in the event of a default; and

(7) Authorizing the Mayor to take any other actions in connection with the issuance, sale, delivery, security, and payment of the bonds or notes.

(c) *Timing and perfection of security interests.* — Notwithstanding article 9 of title 28 of the District of Columbia Code, any security interest in District revenues created under subsection (a) of this section shall be valid, binding, and perfected from the time such security interest is created, with or without the physical delivery of any funds or any other property and with or without any further action. Such security interest shall be valid, binding, and perfected whether or not any statement, document, or instrument relating to such security interest is recorded or filed. The lien created by such security interest is valid, binding, and perfected with respect to any individual or legal entity having claims against the District, whether or not such individual or legal entity has notice of such lien.

(d) *Obligations and expenditures not subject to appropriation.* — The fourth sentence of § 1-204.46 shall not apply to any obligation or expenditure of any District revenues to secure any general obligation bond or note under subsection (a) of this section.

(Dec. 24, 1973, 87 Stat. 806, Pub. L. 93-198, title IV, § 467, as added Dec. 23, 1981, 95 Stat. 1496, Pub. L. 97-105, § 10; enacted, Apr. 9, 1997, D.C. Law 11-254, § 2, 44 DCR 1575; Aug. 5, 1997, 111 Stat. 770, Pub. L. 105-33, § 11505.)

Section references. — This section is referred to in §§ 1-204.46 and 1-204.48.

Prior Codifications. — 1981 Ed., § 47-326.1.

Editor's notes. — Request for Congressional action: Pursuant to § 501(a) of D.C. Law 10-188, the Council for the District of Columbia requested that Congress amend subsection (d), § 467(d) of the District of Columbia Self-Government and Governmental Reorganization Act, to read as follows:

"(d) The fourth sentence of § 47-304 (§ 1-204.46, 2001 Ed.) shall not apply to any obliga-

tion or expenditure of any District revenues to secure any general obligation bond under subsection (a) of this section or any revenue bond or other obligation under subsection (a-1) of this section or for repair, maintenance, and capital improvements. Other operating obligations or expenditures shall not be exempt from the fourth sentence of § 47-304 (§ 1-204.46, 2001 Ed.), except that if the operating obligations or expenditures are incurred prior to October 1, 1995, they shall be approved pursuant to the procedures set forth in § 47-304.1 (§ 1-204.53, 2001 Ed.)."

Subpart 2—Short-Term Borrowing.

§ 1-204.71. Borrowing to meet appropriations.

(a) In the absence of unappropriated revenues available to meet appropriations made pursuant to § 1-204.46, the Council may by act authorize the issuance of general obligation notes. The total amount of all such general obligation notes originally issued during a fiscal year shall not exceed 2% of the total appropriations for the District for such fiscal year.

(b) Any general obligation note issued under subsection (a) of this section, as authorized by an act of the Council, may be renewed. Any such note, including any renewal of such note, shall be due and payable not later than the last day of the fiscal year occurring immediately after the fiscal year during which the act authorizing the original issuance of such note takes effect.

(c) The 4th sentence of § 1-204.46 shall not apply to any amount obligated or expended by the District for the payment of the principal of, interest on, or redemption premium for any general obligation note issued under subsection (a) of this section.

(Dec. 24, 1973, 87 Stat. 806, Pub. L. 93-198, title IV, § 471; Dec. 23, 1981, 95 Stat. 1493, Pub. L. 97-105, § 11.)

Cross references. — Housing finance agency, agency bonds and notes, obligations, see § 42-2704.02.

Section references. — This section is referred to in §§ 1-204.46, 1-204.67, 1-204.82, and 1-204.83.

Prior Codifications. — 1981 Ed., § 47-327. 1973 Ed., § 47-247.

Delegation of Authority. — Delegation of authority under D.C. Law 8-217, the “General Obligation Bond Act of 1990,” see Mayor’s Order 91-79, May 14, 1991.

Delegation of authority under D.C. Law 9-46, the “General Fund Recovery Act of 1991,” see Mayor’s Order 91-147, October 4, 1991.

Editor’s notes. — Enactment upon adoption of federal legislation: Section 4 of D.C. Law 11-254 provided that “§§ 47-101, 47-117, 47-

130, 47-301, 47-302, 47-303, 47-304, 47-304.1, 47-305, 47-310, 47-312, 47-317.1 through 47-317.6, 47-321 through 47-325, 47-327 through 47-331, and 47-332 through 47-334 of Title 47 §§ 1-204.41, 1-204.55, 1-204.50, 1-204.42, 1-204.43, 1-204.44, 1-204.46, 1-204.53, 1-204.47, 1-204.48, 1-204.49, 1-204.24a through 1-204.24e, 47-317.06, 1-204.61 through 1-204.65, 1-204.71 through 1-204.75, 1-204.81, 1-204.85, 1-204.86 and 1-204.90, 2001 Ed. of the District of Columbia Code shall be enacted as part of Title 47 upon the adoption by Congress of legislation so enacting these sections.”

General obligation notes authorized: D.C. Law 12-1, effective May 7, 1997, authorized the issuance of general obligation notes of the District of Columbia for the purpose of financing certain appropriations for which unappropriated revenues are not available.

§ 1-204.72. Borrowing in anticipation of revenues.

(a) *In general.* — In anticipation of the collection or receipt of revenues for a fiscal year, the Council may by act authorize the issuance of general obligation notes for such fiscal year, to be known as revenue anticipation notes.

(b) *Limit on aggregate notes outstanding.* — The total amount of all revenue anticipation notes issued under subsection (a) of this section outstanding at any time during a fiscal year shall not exceed 20% of the total anticipated revenue of the District for such fiscal year, as certified by the Mayor under this subsection. The Mayor shall certify, as of a date which occurs not more than 15 days before each original issuance of such revenue anticipation notes, the total anticipated revenue of the District for such fiscal year.

(c) *Permitted outstanding duration.* — Any revenue anticipation note issued under subsection (a) of this section may be renewed. Any such note, including any renewal note, shall be due and payable not later than the last day of the fiscal year during which the note was originally issued.

(d) *Effective date of authorization acts; payments not subject to appropriation.* —

(1) *Effective date.* — Notwithstanding § 1-206.02(c)(1), any act of the Council authorizing the issuance of revenue anticipation notes under subsection (a) of this section shall take effect:

(A) if such act is enacted during a control year (as defined in § 47-393(4)), on the date of approval by the District of Columbia Financial Responsibility and Management Assistance Authority; or

(B) if such act is enacted during any other year, on the date of enactment of such act.

(2) *Payments not subject to appropriation.* — The fourth sentence of § 1-204.46 shall not apply to any amount obligated or expended by the District for the payment of the principal of, interest on, or redemption premium for any revenue anticipation note issued under subsection (a) of this section.

(Dec. 24, 1973, 87 Stat. 806, Pub. L. 93-198, title IV, § 472; Dec. 23, 1981, 95 Stat. 1493, Pub. L. 97-105, § 12; Aug. 5, 1997, 111 Stat. 771, Pub. L. 105-33, § 11506.)

Cross references. — Council, limitations on authority, see § 1-206.02.

Section references. — This section is referred to in §§ 1-204.46, 1-204.67, 1-204.82, and 1-204.83.

Prior Codifications. — 1981 Ed., § 47-328. 1973 Ed., § 47-248.

Temporary legislation. — For temporary (225 day) authorization of the issuance of District of Columbia general obligation tax revenue anticipation notes, see §§ 2 to 17 of Fiscal Year 2004 Tax Revenue Anticipation Notes Temporary Act of 2003 (D.C. Law 15-41, November 26, 2003, law notification 50 DCR 10699).

For temporary (225 day) authorization of the issuance of District of Columbia general obligation tax revenue anticipation notes, see §§ 2 to 17 of Fiscal Year 2005 Tax Revenue Anticipation Notes Temporary Act of 2004 (D.C. Act 15-639, November 30, 2004, law notification 52 DCR 1228).

Emergency legislation. — For temporary authorization, on an emergency basis, the issuance of District of Columbia general obligation tax revenue anticipation notes of the District of Columbia to finance general governmental expenses for the fiscal year ending September 30, 1996, see § 2-15 and 17 of the Tax Revenue Anticipation Notes Emergency Act of 1996 (D.C. Act 11-301, July 15, 1996, 43 DCR 4169).

For emergency authorization of the issuance of District of Columbia general obligation tax

revenue anticipation notes to finance general governmental expenses for the fiscal year ending September 30, 1999, see §§ 2-15 of the Fiscal Year 1999 Tax Revenue Anticipation Notes Emergency Act of 1998 (D.C. Act 12-433, July 29, 1998, 45 DCR 5734), §§ 2-15 of the Fiscal Year 1999 Tax Revenue Anticipation Notes Second Emergency Act of 1998 (D.C. Act 12-498, October 27, 1998, 45 DCR 8038, and §§ 2-15 of the Fiscal Year 1999 Tax Revenue Anticipation Notes of Congressional Review Emergency Act of 1999 (D.C. Act 13-7, February 8, 1999, 46 DCR 2301).

D.C. Act 12-75 authorized, on an emergency basis, the issuance of District of Columbia general obligation tax revenue anticipation notes of the District of Columbia to finance general governmental expenses for the fiscal year ending September 30,

Delegation of Authority. — Delegation of authority under D.C. Act 8-246, the “Tax Revenue Anticipation Notes Act of 1990”, see Mayor’s Order 90-118, September 27, 1990.

Delegation of contracting authority, see Mayor’s Order 91-92, June 7, 1991.

Delegation of authority under D.C. Law 9-46, the “General Fund Recovery Act of 1991”, see Mayor’s Order 91-147, October 4, 1991.

Delegation of authority pursuant to D.C. Act 10-227, the Tax Revenue Anticipation Notes Act of 1994, see Mayor’s Order 94-104, April 29, 1994 (41 DCR 2535).

Delegation of authority under D.C. Law 10-364, the “Second Tax Revenue Anticipations

Notes Act of 1994", see Mayor's Order 94-266, December 29, 1994.

Delegation of authority under D.C. Act 11-301, the "Tax Revenue Anticipation Notes Emergency Act of 1996", see Mayor's Order 96-107, July 25, 1996 (43 DCR 4321).

Delegation of authority under D.C. Act 12-75, the "Tax Revenue Anticipation Notes Emergency Act of 1997" ("the TRANs Act"), see Mayor's Order 97-123, June 27, 1997 (44 DCR 4143).

Delegation of authority under D.C. Act 12-153, the "Fiscal Year 1998 Tax Revenue Anticipation Notes Emergency Act of 1997" ("the TRANs Act"), see Mayor's Order 97-175, September 30, 1997 (44 DCR 5870).

Delegation of authority pursuant to D.C. Act 12-498, the "Fiscal Year 1999 Tax Revenue Anticipation Notes Second Emergency Act of 1998", see Mayor's Order 98-173, November 5, 1998 (45 DCR 8200).

Editor's notes. — D.C. Act 10-227, effective April 22, 1994, authorized the issuance of District of Columbia general obligation tax revenue anticipation notes of the District of Columbia to finance general governmental expenses for the fiscal year ending September 30, 1994.

D.C. Act 11-373, effective August 5, 1996, authorized the issuance of District of Columbia general obligation tax revenue anticipation notes of the District of Columbia to finance general governmental expenses for the fiscal year ending September 30, 1996.

D.C. Act 14-386, effective June 21, 2002, authorized the issuance of District of Columbia general obligation tax revenue anticipation notes of the District of Columbia to finance general governmental expenses for the fiscal year ending September 30, 2002.

D.C. Act 14-481, effective October 23, 2002, authorized the issuance of general obligation tax revenue anticipation notes of the District of Columbia to finance general governmental expenses for fiscal year ending September 30, 2003.

D.C. Act 15-382, effective February 27, 2004, authorized the issuance of general obligation tax revenue anticipation notes of the District of Columbia to finance general governmental expenses for fiscal year ending September 30, 2004.

D.C. Act 15-695, effective December 29, 2004, authorized the issuance of general obligation tax revenue anticipation notes of the District of

Columbia to finance general governmental expenses for fiscal year ending September 30, 2005.

D.C. Act 16-211, effective November 28, 2005, authorized the issuance of general obligation tax revenue anticipation notes of the District of Columbia to finance general governmental expenses for fiscal year ending September 30, 2006.

D.C. Act 16-538, effective December 4, 2006, authorized the issuance of general obligation tax revenue anticipation notes of the District of Columbia to finance general governmental expenses for fiscal year ending September 30, 2007.

D.C. Act 17-209, effective November 27, 2007, authorized the issuance of general obligation tax revenue anticipation notes of the District of Columbia to finance general governmental expenses for fiscal year ending September 30, 2008.

D.C. Act 17-628, effective December 22, 2008, authorized the issuance of general obligation tax revenue anticipation notes of the District of Columbia to finance general governmental expenses for fiscal year ending September 30, 2009.

D.C. Act 18-557, effective October 7, 2010, authorized the issuance of general obligation tax revenue anticipation notes of the District of Columbia to finance general governmental expenses for fiscal year ending September 30, 2010.

D.C. Act 18-560, effective October 12, 2010, authorized the issuance of general obligation tax revenue anticipation notes of the District of Columbia to finance general governmental expenses for fiscal year ending September 30, 2011.

Enactment upon adoption of federal legislation: Section 4 of D.C. Law 11-254 provided that "§§ 47-101, 47-117, 47-130, 47-301, 47-302, 47-303, 47-304, 47-304.1, 47-305, 47-310, 47-312, 47-317.1 through 47-317.6, 47-321 through 47-325, 47-327 through 47-331, and 47-332 through 47-334 of Title 47 [§§ 1-204.41, 1-204.55, 1-204.50, 1-204.42, 1-204.43, 1-204.44, 1-204.46, 1-204.53, 1-204.47, 1-204.48, 1-204.49, 1-204.24a through 1-204.24e, 47-317.06, 1-204.61 through 1-204.65, 1-204.71 through 1-204.75, 1-204.81, 1-204.85, 1-204.86 and 1-204.90, 2001 Ed.] of the District of Columbia Code shall be enacted as part of Title 47 upon the adoption by Congress of legislation so enacting these sections."

§ 1-204.73. Notes redeemable prior to maturity.

No notes issued pursuant to this part shall be made payable on demand, but any note may be made subject to redemption prior to maturity on such notice and at such time as may be stated in the note.

(Dec. 24, 1973, 87 Stat. 806, Pub. L. 93-198, title IV, § 473.)

Prior Codifications. — 1981 Ed., § 47-329. 1973 Ed., § 47-249.

References in text. — “This part,” referred to in this section, refers to part E (comprising of §§ 461 to 490) of title IV of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973, 88 Stat. 804-809, Pub. L. 93-198, codified as §§ 1-204.89, 1-204.88, 1-204.87, and 1-204.61 to 1-204.90.

Editor’s notes. — Enactment upon adoption of federal legislation: Section 4 of D.C. Law 11-254 provided that “§§ 47-101, 47-117, 47-

130, 47-301, 47-302, 47-303, 47-304, 47-304.1, 47-305, 47-310, 47-312, 47-317.1 through 47-317.6, 47-321 through 47-325, 47-327 through 47-331, and 47-332 through 47-334 of Title 47 §§ 1-204.41, 1-204.55, 1-204.50, 1-204.42, 1-204.43, 1-204.44, 1-204.46, 1-204.53, 1-204.47, 1-204.48, 1-204.49, 1-204.24a through 1-204.24e, 47-317.06, 1-204.61 through 1-204.65, 1-204.71 through 1-204.75, 1-204.81, 1-204.85, 1-204.86 and 1-204.90, 2001 Ed. of the District of Columbia Code shall be enacted as part of Title 47 upon the adoption by Congress of legislation so enacting these sections.”

§ 1-204.74. Sales of notes.

All notes issued pursuant to this part may be sold at not less than par and accrued interest at private sale without previous advertising.

(Dec. 24, 1973, 87 Stat. 806, Pub. L. 93-198, title IV, § 474.)

Prior Codifications. — 1981 Ed., § 47-330. 1973 Ed., § 47-250.

§ 1-204.75. Bond anticipation notes.

(a) *Authorizing issuance.* —

(1) *In general.* — In anticipation of the issuance of general obligation bonds, the Council may by act authorize the issuance of general obligation notes to be known as bond anticipation notes in accordance with this section.

(2) *Purposes; permitting issuance of general obligation bonds to cover indebtedness.* — The proceeds of bond anticipation notes issued under this section shall be used for the purposes for which general obligation bonds may be issued under § 1-204.61, and such notes shall constitute indebtedness which may be refunded through the issuance of general obligation bonds under such section.

(b) *Maximum annual debt service amount.* — The act of the Council authorizing the issuance of bond anticipation notes shall set forth for the bonds anticipated by such notes an estimated maximum annual debt service amount based on an estimated schedule of annual principal payments and an estimated schedule of annual interest payments (based on an estimated maximum average annual interest rate for such bonds over a period of 30 years from the earlier of the date of issuance of the notes or the date of original issuance of prior notes in anticipation of those bonds). Such estimated maximum annual debt service amount as estimated at the time of issuance of the original bond anticipation notes shall be included in the calculation required by § 1-206.03(b) while such notes or renewal notes are outstanding.

(c) *Permitted outstanding duration.* — Any bond anticipation note, including any renewal note, shall be due and payable not later than the last day of the third fiscal year following the fiscal year during which the note was originally issued.

(d) *General authority of Council.* — If provided for in [an] Act of the Council authorizing such an issue of bond anticipation notes, bond anticipation notes may be issued in succession, in such amounts, at such times, and bearing interest rates within the permitted maximum authorized by such Act.

(e) *Effective date of authorization acts; payments not subject to appropriation.* —

(1) *Effective date.* — Notwithstanding § 1-206.02(c)(1), any act of the Council authorizing the renewal of bond anticipation notes under subsection (c) [subsection (d)] or the issuance of general obligation bonds under § 1-204.61(a) to refund any bond anticipation notes shall take effect —

(A) if such act is enacted during a control year (as defined in § 47-393(4)), on the date of approval by the District of Columbia Financial Responsibility and Management Assistance Authority; or

(B) if such act is enacted during any other year, on the date of enactment of such act.

(2) *Payment not subject to appropriation.* — The fourth sentence of § 1-204.46 shall not apply to any amount obligated or expended by the District for the payment of the principal of, interest on, or redemption premium for any bond anticipation note issued under this section.

(Dec. 24, 1973, 87 Stat. 806, Pub. L. 93-198, title IV, § 475, as added Aug. 5, 1997, 111 Stat. 771, Pub. L. 105-33, § 11507(a).)

Prior Codifications. — 1981 Ed., § 47-330.1.

Emergency legislation. — For temporary (90 day) authorization for the issuance of general obligation bonds and bond anticipation notes, see § 2 of General Obligation Bond and Bond Anticipation Notes for Fiscal Years 2002-2007 Authorization Emergency Act of 2002 (D.C. Act 14-418, July 17, 2002, 49 DCR 7392).

Effective date. — Section 11721 of Title XI of Pub. L. 105-33, 111 Stat. 786, the National Capital Revitalization and Self-Government Improvement Act of 1997, provided that except as otherwise provided in this title, the provisions of this title shall take effect on the later of October 1, 1997, or the day the District of Columbia Financial Responsibility and Man-

agement Assistance Authority certifies that the financial plan and budget for the District government for fiscal year 1998 meet the requirements of section 201(c)(1) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, as amended by this title.

Editor's notes. — General Obligation Bonds Authorized: D.C. Law 14-214, effective March 25, 2003, authorized the issuance of general obligation bonds and general obligation bond anticipation notes of the District of Columbia for the purposes of financing certain capital projects and the refunding of certain capital indebtedness of the District of Columbia during fiscal years 2002-2007.

Subpart 3—Payment of Bonds and Notes.

§ 1-204.81. Special tax.

(a) Any act of the Council authorizing the issuance of general obligation bonds under § 1-204.61(a) shall provide for the annual levy of a special tax or charge, if the Council determines that such tax or charge is necessary. Such tax or charge shall be levied, without limitation as to rate or amount, in amounts which together with other District revenues available and applicable will be sufficient to pay the principal of and interest on such general obligation bonds as they become due and payable. Such tax or charge shall be levied and collected at the same time and in the same manner as other District taxes are

levied and collected, and when collected shall be set aside in a separate debt service fund and irrevocably dedicated to the payment of such principal and interest.

(b) The Comptroller General of the United States shall make annual audits of the amounts set aside and deposited in each debt service fund pursuant to subsection (a) of this section.

(Dec. 24, 1973, 87 Stat. 807, Pub. L. 93-198, title IV, § 481; Dec. 23, 1981, 95 Stat. 1498, Pub. L. 97-105, § 13.)

Cross references. — National capital revitalization corporation, “available real property tax revenue,” defined, see § 2-1219.01.

National capital revitalization corporation, redevelopment districts, allocation of tax increment revenues, see § 2-1219.21.

Tax increment financing authorization, “available real property tax revenue,” defined, see § 2-1217.01.

Section references. — This section is referred to in §§ 1-204.83, 1-204.90, and 2-1217.71.

Prior Codifications. — 1981 Ed., § 47-331. 1973 Ed., § 47-251.

Delegation of Authority. — Delegation of authority under D.C. Act 8-246, the “Tax Revenue Anticipation Notes Act of 1990,” see Mayor’s Order 90-118, September 27, 1990.

Delegation of authority under D.C. Law 9-46,

the “General Fund Recovery Act of 1991,” see Mayor’s Order 91-147, October 4, 1991.

Editor’s notes. — Enactment upon adoption of federal legislation: Section 4 of D.C. Law 11-254 provided that “§§ 47-101, 47-117, 47-130, 47-301, 47-302, 47-303, 47-304, 47-304.1, 47-305, 47-310, 47-312, 47-317.1 through 47-317.6, 47-321 through 47-325, 47-327 through 47-331, and 47-332 through 47-334 of Title 47 §§ 1-204.41, 1-204.55, 1-204.50, 1-204.42, 1-204.43, 1-204.44, 1-204.46, 1-204.53, 1-204.47, 1-204.48, 1-204.49, 1-204.24a through 1-204.24e, 47-317.06, 1-204.61 through 1-204.65, 1-204.71 through 1-204.75, 1-204.81, 1-204.85, 1-204.86 and 1-204.90, 2001 Ed. of the District of Columbia Code shall be enacted as part of Title 47 upon the adoption by Congress of legislation so enacting these sections.”

§ 1-204.82. Full faith and credit of the District.

The full faith and credit of the District is pledged for the payment of the principal of and interest on any general obligation bond or note issued under § 1-204.61(a), § 1-204.71(a), or § 1-204.72(a), whether or not such pledge is stated in such bond or note or in the act authorizing the issuance of such bond or note.

(Dec. 24, 1973, 87 Stat. 807, Pub. L. 93-198, title IV, § 482, as added Dec. 23, 1981, 95 Stat. 1498, Pub. L. 97-105, § 14.)

Prior Codifications. — 1981 Ed., § 47-331.1.

Delegation of Authority. — Delegation of authority under D.C. Act 8-246, the “Tax Revenue Anticipation Notes Act of 1990,” see Mayor’s Order 90-118, September 27, 1990.

Delegation of authority under D.C. Law 9-46, the “General Fund Recovery Act of 1991,” see Mayor’s Order 91-147, October 4, 1991.

§ 1-204.83. Payment of the general obligation bonds and notes.

(a) The Council shall provide in each annual budget for the District of Columbia government for a fiscal year adopted by the Council pursuant to § 1-204.46 sufficient funds to pay the principal of and interest on all general obligation bonds or notes issued under § 1-204.61(a), § 1-204.71(a), or § 1-204.72(a) becoming due and payable during such fiscal year.

(b) The Mayor shall insure that the principal of and interest on all general obligation bonds and notes issued under § 1-204.61(a), § 1-204.71(a), or § 1-204.72(a) are paid when due, including by paying such principal and interest from funds not otherwise legally committed.

(c) Repealed.

(d) The 4th sentence of § 1-204.46 shall not apply to:

(1) Any amount set aside in a debt service fund under § 1-204.81(a);

(2) Any amount obligated or expended for the payment of the principal of, interest on, or redemption premium for any general obligation bond or note issued under § 1-204.61(a), § 1-204.71(a), or § 1-204.72(a);

(3) Any amount obligated or expended as provided by the Council in any annual budget for the District of Columbia government pursuant to subsection (a) of this section or as provided by any amendment or supplement to such budget; or

(4) Any amount obligated or expended by the Mayor pursuant to subsection (b) or (c) [(c) repealed] of this section.

(Dec. 24, 1973, 87 Stat. 807, Pub. L. 93-198, title IV, § 483, as added Dec. 23, 1981, 95 Stat. 1498, Pub. L. 97-105, § 14; Aug. 5, 1997, 111 Stat. 777, Pub. L. 105-33, § 11601(b)(1)(B).)

Section references. — This section is referred to in §§ 1-204.46 and 1-204.48.

Prior Codifications. — 1981 Ed., § 47-331.2.

Subpart 4—Full Faith and Credit of the United States.

§ 1-204.84. Full faith and credit of United States not pledged.

The full faith and credit of the United States is not pledged for the payment of any principal of or interest on any bond, note, or other obligation issued by the District under this part. The United States is not responsible or liable for the payment of any principal of or interest on any bond, note, or other obligation issued by the District under this part.

(Dec. 24, 1973, 87 Stat. 807, Pub. L. 93-198, title IV, § 484, as added Dec. 23, 1981, 95 Stat. 1499, Pub. L. 97-105, § 15.)

Prior Codifications. — 1981 Ed., § 47-331.3.

References in text. — “This part,” referred to in this section, refers to part E (comprising §§ 461 to 490) of title IV of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973, 88 Stat. 804-809, Pub. L. 93-198, codified as §§ 1-204.89, 1-204.88, 1-204.87, and 1-204.61 to 1-204.90.

Delegation of Authority. — Delegation of authority under D.C. Act 8-246, the “Tax Revenue Anticipation Notes Act of 1990,” see Mayor’s Order 90-118, September 27, 1990.

Delegation of authority under D.C. Law 9-46, the “General Fund Recovery Act of 1991,” see Mayor’s Order 91-147, October 4, 1991.

Subpart 5—Tax Exemptions; Legal Investment; Water Pollution; Reservoirs; Metro Contributions; and Revenue Bonds.

§ 1-204.85. Tax exemption.

Bonds and notes issued by the Council pursuant to this subchapter and the interest thereon shall be exempt from all federal and District taxation except estate, inheritance, and gift taxes.

(Dec. 24, 1973, 87 Stat. 807, Pub. L. 93-198, title IV, § 485.)

Prior Codifications. — 1981 Ed., § 47-332. 1973 Ed., § 47-252.

Editor's notes. — Enactment upon adoption of federal legislation: Section 4 of D.C. Law 11-254 provided that "§§ 47-101, 47-117, 47-130, 47-301, 47-302, 47-303, 47-304, 47-304.1, 47-305, 47-310, 47-312, 47-317.1 through 47-317.6, 47-321 through 47-325, 47-327 through 47-331, and 47-332 through 47-334 of Title 47

§§ 1-204.41, 1-204.55, 1-204.50, 1-204.42, 1-204.43, 1-204.44, 1-204.46, 1-204.53, 1-204.47, 1-204.48, 1-204.49, 1-204.24a through 1-204.24e, 47-317.06, 1-204.61 through 1-204.65, 1-204.71 through 1-204.75, 1-204.81, 1-204.85, 1-204.86 and 1-204.90, 2001 Ed. of the District of Columbia Code shall be enacted as part of Title 47 upon the adoption by Congress of legislation so enacting these sections."

§ 1-204.86. Legal investment.

Notwithstanding any restriction on the investment of funds by fiduciaries contained in any other law, all domestic insurance companies, domestic insurance associations, executors, administrators, guardians, trustees, and other fiduciaries within the District may legally invest any sinking funds, moneys, trust funds, or other funds belonging to them or under or within their control in any bonds issued pursuant to this subchapter, it being the purpose of this section to authorize the investment in such bonds or notes of all sinking, insurance, retirement, compensation, pension, and trust funds. National banking associations are authorized to deal in, underwrite, purchase and sell, for their own accounts or for the accounts of customers, bonds and notes issued by the Council to the same extent as national banking associations are authorized by paragraph 7 of § 5136 of the Revised Statutes (§ 24 of Title 12, United States Code), to deal in, underwrite, purchase and sell obligations of the United States, states, or political subdivisions thereof. All federal building and loan associations and federal savings and loan associations; and banks, trust companies, building and loan associations, and savings and loan associations, domiciled in the District, may purchase, sell, underwrite, and deal in, for their own account or for the account of others, all bonds or notes issued pursuant to this subchapter. Nothing contained in this section shall be construed as relieving any person, firm, association, or corporation from any duty of exercising due and reasonable care in selecting securities for purchase or investment.

(Dec. 24, 1973, 87 Stat. 807, Pub. L. 93-198, title IV, § 486.)

Prior Codifications. — 1981 Ed., § 47-333. 1973 Ed., § 47-253.

§ 1-204.87. Water pollution.

(a) The Mayor shall annually estimate the amount of the District's principal and interest expense which is required to service District obligations attributable to the Maryland and Virginia pro rata share of District sanitary sewage water works and other water pollution projects which provide service to the local jurisdictions in those states. Such amounts as determined by the Mayor pursuant to the agreements described in subsection (b) of this section shall be used to exclude the Maryland and Virginia share of pollution projects cost from the limitation on the District's capital project obligations as provided in § 1-206.03(b).

(b) The Mayor shall enter into agreements with the states and local jurisdictions concerned for annual payments to the District of rates and charges for waste treatment services in accordance with the use and benefits made and derived from the operation of the said waste treatment facilities. Each such agreement shall require that the estimated amount of such rates and charges will be paid in advance, subject to adjustment after each year. Such rates and charges shall be sufficient to cover the cost of construction, interest on capital, operation and maintenance, and the necessary replacement of equipment during the useful life of the facility.

(Dec. 24, 1973, 87 Stat. 808, Pub. L. 93-198, title IV, § 487.)

Prior Codifications. — 1981 Ed., § 43-1615.

1973 Ed., § 43-1619.

Emergency legislation. — For temporary (90 day) additions, see § 2 of Blue Plains Intermunicipal Agreement of 2012 Congressional Approval Emergency Request Act of 2012 (D.C. Act 19-422, July 25, 2012, 59 DCR 9365).

Editor's notes. — Restriction on use of funds: Section 136 of Pub. L. 102-382, 106 Stat. 1435, the District of Columbia Appropriations

Act, 1993, provided that none of the funds made available in this Act may be used by the District of Columbia to impose, implement, collect, administer, transfer, or enforce a payment in lieu of taxes on the Water and Sewer Utility Administration that would increase payments required of suburban jurisdictions in Maryland or Virginia under the Blue Plains Intermunicipal Agreement of 1985.

Definitions applicable: The definitions in § 1-201.03 apply to this section.

§ 1-204.88. Cost of reservoirs on Potomac River.

(a) The Mayor is authorized to contract with the United States, any state in the Potomac River basin, any agency or political subdivision thereof, and any other competent state or local authority, with respect to the payment by the District to the United States, either directly or indirectly, of the District's equitable share of any part or parts of the non-federal portion of the costs of any reservoirs authorized by the Congress for construction on the Potomac River or any of its tributaries. Every such contract may contain such provisions as the Mayor may deem necessary or appropriate.

(b) Unless hereafter otherwise provided by legislation enacted by the Council, all payments made by the District and all moneys received by the District pursuant to any contract made under the authority of this chapter shall be paid from, or be deposited in, a fund designated by the Mayor. Charges for water delivered from the District water system for use outside the District may be adjusted to reflect the portions of any payments made by the District

under contracts authorized by this chapter which are equitably attributable to such use outside the District.

(c) There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

(Dec. 24, 1973, 87 Stat. 808, Pub. L. 93-198, title IV, § 488.)

Prior Codifications. — 1981 Ed., § 43-1553.

1973 Ed., §§ 43-1542, 43-1542a.

Editor's notes. — Definitions applicable: The definitions in § 1-201.03 apply to this section.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia

Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 1-204.89. District's contributions to the Washington Metropolitan Area Transit Authority.

Notwithstanding any provision of law to the contrary, beginning with fiscal year 1976 the District share of the cost of the adopted regional system described in subchapter VI of Chapter 11 of Title 9 may be payable from the proceeds of the sale of District general obligation bonds issued pursuant to this subchapter.

(Dec. 24, 1973, 87 Stat. 808, Pub. L. 93-198, title IV, § 489.)

Cross references. — Borrowing, general obligation bonds, see 1-204.61 et seq.

Prior Codifications. — 1981 Ed., § 1-2455. 1973 Ed., § 1-1443a.

§ 1-204.90. Revenue bonds and other obligations.

(a)(1) Subject to paragraph (2) of this subsection, the Council may by act or by resolution authorize the issuance of taxable and tax-exempt revenue bonds, notes, or other obligations to borrow money to finance, refinance, or reimburse and to assist in the financing, refinancing, or reimbursing of or for capital projects and other undertakings by the District or by any District instrumentality, or on behalf of any qualified applicant, including capital projects or undertakings in the areas of housing; health facilities; transit and utility facilities; manufacturing; sports, convention, and entertainment facilities; recreation, tourism and hospitality facilities; facilities to house and equip operations of the District government or its instrumentalities; public infrastructure development and redevelopment; elementary, secondary and college and university facilities; educational programs which provide loans for the payment of educational expenses for or on behalf of students; facilities used to house and equip operations related to the study, development, application, or production of innovative commercial or industrial technologies and social services; water and sewer facilities (as defined in paragraph (5) of this subsection); pollution control facilities; solid and hazardous waste disposal

facilities; parking facilities, industrial and commercial development; authorized capital expenditures of the District; and any other property or project that will, as determined by the Council, contribute to the health, education, safety, or welfare, of, or the creation or preservation of jobs for, residents of the District, or to economic development of the District, and any facilities or property, real or personal, used in connection with or supplementing any of the foregoing; lease-purchase financing of any of the foregoing facilities or property; and any costs related to the issuance, carrying, security, liquidity or credit enhancement of or for revenue bonds, notes, or other obligations, including, capitalized interest and reserves, and the costs of bond insurance, letters of credit, and guaranteed investment, forward purchase, remarketing, auction, and swap agreements. Any such financing, refinancing, or reimbursement may be effected by loans made directly or indirectly to any individual or legal entity, by the purchase of any mortgage, note, or other security, or by the purchase, lease, or sale of any property.

(2) Any revenue bond, note, or other obligation issued under paragraph (1) of this subsection shall be a special obligation of the District and shall be a negotiable instrument, whether or not such revenue bond, note, or other obligation is a security as defined in § 28:8-102(1)(a).

(3) Any revenue bond, note, or other obligation issued under paragraph (1) of this subsection shall be paid and secured (as to principal, interest, and any premium) as provided by the act or resolution of the Council authorizing the issuance of such revenue bond, note, or other obligation. Any act or resolution of the Council, or any delegation of Council authority under subsection (a)(6) of this section, authorizing the issuance of revenue bonds, notes, or other obligations may provide for (A) the payment of such revenue bonds, notes, or other obligations from any available revenues, assets, property (including water and sewer enterprise fund revenues, assets, or other property in the case of bonds, notes, or obligations issued with respect to water and sewer facilities), and (B) the securing of such revenue bond, note, or other obligation by the mortgage of real property or the creation of a security interest in available revenues, assets, or other property (including water and sewer enterprise fund revenues, assets, or other property in the case of bonds, notes, or obligations issued with respect to water and sewer facilities).

(4)(A) In authorizing the issuance of any revenue bond, note, or other obligation under paragraph (1) of this subsection, the Council may enter into, or authorize the Mayor to enter into, any agreement concerning the acquisition, use, or disposition of any available revenues, assets, or property. Any such agreement may create a security interest in any available revenues, assets, or property, may provide for the custody, collection, security, investment, and payment of any available revenues (including any funds held in trust) for the payment of such revenue bond, note, or other obligation, may mortgage any property, may provide for the acquisition, construction, maintenance, and disposition of the undertaking financed or refinanced using the proceeds of such revenue bond, note, or other obligation, and may provide for the doing of any act (or the refraining from doing of any act) which the District has the right to do in the absence of such agreement. Any such agreement may be

assigned for the benefit of, or made a part of any contract with, any holder of such revenue bond, note, or other obligation issued under paragraph (1) of this subsection.

(B) Notwithstanding Article 9 of Title 28, any security interest created under subparagraph (A) of this paragraph shall be valid, binding, and perfected from the time such security interest is created, with or without the physical delivery of any funds or any other property and with or without any further action. Such security interest shall be valid, binding, and perfected whether or not any statement, document, or instrument relating to such security interest is recorded or filed. The lien created by such security interest is valid, binding, and perfected with respect to any individual or legal entity having claims against the District, whether or not such individual or legal entity has notice of such lien.

(C) Any funds of the District held for the payment or security of any revenue bond, note, or other obligation issued under paragraph (1) of this subsection, whether or not such funds are held in trust, may be secured in the manner agreed to by the District and any depository of such funds. Any depository of such funds may give security for the deposit of such funds.

(5) In paragraph (1) of this subsection, the term “water and sewer facilities” means facilities for the obtaining, treatment, storage, and distribution of water, the collection, storage, treatment, and transportation of wastewater, storm drainage, and the disposal of liquids and solids resulting from treatment.

(6)(A) The Council may by act delegate to any District instrumentality the authority of the Council under subsection (a)(1) of this section to issue taxable or tax-exempt revenue bonds, notes, or other obligations to borrow money for the purposes specified in this subsection. For purposes of this paragraph, the Council shall specify for what undertakings revenue bonds, notes, or other obligations may be issued under each delegation made pursuant to this paragraph. Any District instrumentality may exercise the authority and the powers incident thereto delegated to it by the Council as described in the first sentence of this paragraph only in accordance with this paragraph and shall be consistent with this paragraph and the terms of the delegation.

(B) Revenue bonds, notes, or other obligations issued by a District instrumentality under a delegation of authority described in subparagraph (A) of this paragraph shall be issued by resolution of that instrumentality, and any such resolution shall not be considered to be an act of the Council.

(C) Nothing in this paragraph shall be construed as restricting, impairing, or superseding the authority otherwise vested by law in any District instrumentality.

(b) No property owned by the United States may be mortgaged or made subject to any security interest to secure any revenue bond, note, or other obligation issued under subsection (a)(1) of this section.

(c) Any and all such revenue bonds, notes, or other obligations issued under subsection (a)(1) of this section shall not be general obligations of the District, shall not be a pledge of or involve the faith and credit or taxing power of the District (other than with respect to any dedicated taxes) and shall not

constitute a debt of the District, and shall not constitute lending of the public credit for private undertakings for purposes of § 1-206.02(a)(2).

(d) Any and all such bonds, notes, or other obligations shall be issued pursuant to an act of the Council without the necessity of submitting the question of such issuance to the registered qualified electors of the District for approval or disapproval.

(e) Any act of the Council authorizing the issuance of revenue bonds, notes, or other obligations under paragraph (1) of subsection (a) of this section may:

(1) Briefly describe the purpose for which such bonds, notes, or other obligations are to be issued;

(2) Identify the act authorizing such purpose;

(3) Prescribe the form, terms, provisions, manner, and method of issuing and selling (including sale by negotiation or by competitive bid) such bonds, notes, or other obligations;

(4) Provide for the rights and remedies of the holders of such bonds, notes, or other obligations upon default;

(5) Prescribe any other details with respect to the issuance, sale, or securing of such bonds, notes, or other obligations; and

(6) Authorize the Mayor to take any actions in connection with the issuance, sale, delivery, security, and payment of such bonds, notes, or other obligations, including the prescribing of any terms or conditions not contained in such act of the Council.

(f) The fourth sentence of § 1-204.46 shall not apply to:

(1) Any amount (including the amount of any accrued interest or premium) obligated or expended from the proceeds of the sale of any revenue bond, note, or other obligations issued under subsection (a)(1) of this section;

(2) Any amount obligated or expended for the payment of the principal of, interest on, or any premium for any revenue bond, note, or other obligation issued under subsection (a)(1) of this section;

(3) Any amount obligated or expended pursuant to provisions made to secure any revenue bond, note, or other obligations issued under subsection (a)(1) of this section; and

(4) Any amount obligated or expended pursuant to commitments made in connection with the issuance of revenue bonds, notes, or other obligations for repair, maintenance, and capital improvements relating to undertakings financed through any revenue bond, note, or other obligation issued under subsection (a)(1) of this section.

(g)(1) The Council may delegate to any housing finance agency established by it (whether established before or after April 12, 1980) the authority of the Council under subsection (a) of this section to issue revenue bonds, notes, and other obligations to borrow money to finance or assist in the financing of undertakings in the area of primarily low-and moderate-income housing. The Council shall define for the purposes of the preceding sentence what undertakings shall constitute undertakings in the area of primarily low-and moderate-income housing. Any such housing finance agency may exercise authority delegated to it by the Council as described in the first sentence of this paragraph (whether such delegation is made before or after April 12, 1980) only in accordance with this subsection.

(2) Revenue bonds, notes, and other obligations issued by a housing finance agency of the District under a delegation of authority described in paragraph (1) of this subsection shall be issued by resolution of the agency, and any such resolution shall not be considered to be an act of the Council.

(3) The 4th sentence of § 1-204.46 shall not apply to:

(A) Any amount (including the amount of any accrued interest or premium) obligated or expended from the proceeds of the sale of any revenue bond, note, or other obligation issued under paragraph (1) of this subsection;

(B) Any amount obligated or expended for the payment of the principal of, interest on, or any premium for any revenue bond, note, or other obligation issued under paragraph (1) of this subsection; and

(C) Any amount obligated or expended to secure any revenue bond, note, or other obligation issued under paragraph (1) of this subsection.

(h)(1) The Council may delegate to the District of Columbia Water and Sewer Authority established pursuant to § 34-2202.02 the authority of the Council under subsection (a) of this section to issue revenue bonds, notes, and other obligations to borrow money to finance or assist in the financing or refinancing of undertakings in the area of utilities facilities, pollution control facilities, and water and sewer facilities (as defined in subsection (a)(5) of this section). The Authority may exercise authority delegated to it by the Council as described in the first sentence of this paragraph (whether such delegation is made before or after August 6, 1996) only in accordance with this subsection.

(2) Revenue bonds, notes, and other obligations issued by the District of Columbia Water and Sewer Authority under a delegation of authority described in paragraph (1) of this subsection shall be issued by resolution of the Authority, and any such resolution shall not be considered to be an act of the Council.

(3) The fourth sentence of § 1-204.46 shall not apply to:

(A) Any amount (including the amount of any accrued interest or premium) obligated or expended from the proceeds of the sale of any revenue bond, note, or other obligation issued pursuant to this subsection;

(B) Any amount obligated or expended for the payment of the principal of interest on, or any premium for any revenue bond, note, or other obligation issued pursuant to this subsection;

(C) Any amount obligated or expended to secure any revenue bond, note, or other obligation issued pursuant to this subsection; or

(D) Any amount obligated or expended for repair, maintenance, and capital improvements to facilities financed pursuant to this subsection.

(i)(1) The Council may delegate to the District of Columbia Tobacco Settlement Financing Corporation (hereafter in this subsection referred to as the "Corporation") established pursuant to subchapter III of Chapter 18 of Title 7 the authority of the Council under subsection (a) to issue revenue bonds, notes, and other obligations which are used to borrow money to finance or assist in the financing or refinancing of capital projects and other undertakings of the District of Columbia and which are payable solely from and secured by payments under the Master Tobacco Settlement Agreement. The Corporation may exercise authority delegated to it by the Council as described in the first

sentence of this paragraph (whether such delegation is made before or after the date of the enactment of this subsection) only in accordance with this subsection and the provisions of subchapter III of Chapter 18 of Title 7.

(2) Revenue bonds, notes, and other obligations issued by the Corporation under a delegation of authority described in paragraph (1) of this subsection shall be issued by resolution of the Corporation, and any such resolution shall not be considered to be an act of the Council.

(3) The fourth sentence of § 1-204.46 shall not apply to:

(A) Any amount (including the amount of any accrued interest or premium) obligated or expended from the proceeds of the sale of any revenue bond, note, or other obligation issued pursuant to this subsection;

(B) Any amount obligated or expended for the payment of the principal of, interest on, or any premium for any revenue bond, note, or other obligation issued pursuant to this subsection;

(C) Any amount obligated or expended to secure any revenue bond, note, or other obligation issued pursuant to this subsection; or

(D) Any amount obligated or expended for repair, maintenance, and capital improvements to facilities financed pursuant to this subsection.

(4) In this subsection, the term "Master Tobacco Settlement Agreement" means the settlement agreement (and related documents), as may be amended from time to time, entered into on November 23, 1998, by the District of Columbia and leading United States tobacco product manufacturers.

(j) The revenue bonds, notes, or other obligations issued under subsection (a)(1) of this section are not general obligation bonds of the District government and shall not be included in determining the aggregate amount of all outstanding obligations subject to the limitation specified in § 1-206.03(b).

(k) The issuance of revenue bonds, notes, or other obligations by the District where the ultimate obligation to repay such revenue bonds, notes, or other obligations is that of one or more nongovernmental persons or entities may be authorized by resolution of the Council. The issuance of all other revenue bonds, notes, or other obligations by the District shall be authorized by act of the Council.

(l) During any control period (as defined in § 47-392.09), any act or resolution of the Council authorizing the issuance of revenue bonds, notes, or other obligations under subsection (a)(1) of this section shall be submitted to the District of Columbia Financial Responsibility and Management Assistance Authority for certification in accordance with § 47-392.04. Any certification issued by the Authority during a control period shall be effective for purposes of this subsection for revenue bonds, notes, or other obligations issued pursuant to such act or resolution of the Council whether the revenue bonds, notes, or other obligations are issued during or subsequent to that control period.

(m) The following provisions of law shall not apply with respect to property acquired, held, and disposed of by the District in accordance with the terms of any lease-purchase financing authorized pursuant to subsection (a)(1) of this section:

(1) Chapter 8 of Title 10.

(2) Subchapter III of Chapter 13 of Title 16.

(3) Any other provision of District of Columbia law that prohibits or restricts lease-purchase financing.

(n) For purposes of this section, the following definitions shall apply:

(1) The term "revenue bonds, notes, or other obligations" means special fund bonds, notes, or other obligations (including refunding bonds, notes, or other obligations) used to borrow money to finance, assist in financing, refinance, or repay, restore or reimburse moneys used for purposes referred to in subsection (a)(1) of this section the principal of and interest, if any, on which are to be paid and secured in the manner described in this section and which are special obligations and to which the full faith and credit of the District of Columbia is not pledged.

(2) The term "District instrumentality" means any agency or instrumentality (including an independent agency or instrumentality), authority, commission, board, department, division, office, body, or officer of the District of Columbia government duly established by an act of the Council or by the laws of the United States, whether established before or after August 5, 1997.

(3) The term "available revenues" means gross revenues and receipts, other than general fund tax receipts, lawfully available for the purpose and not otherwise exclusively committed to another purpose, including enterprise funds, grants, subsidies, contributions, fees, dedicated taxes and fees, investment income and proceeds of revenue bonds, notes, or other obligations issued under this section.

(4) The term "enterprise fund" means a fund or account for operations that are financed or operated in a manner similar to private business enterprises, or established so that separate determinations may more readily be made periodically of revenues earned, expenses incurred, or net income for management control, accountability, capital maintenance, public policy, or other purposes.

(5) The term "dedicated taxes and fees" means taxes and surtaxes, portions thereof, tax increments, or payments in lieu of taxes, and fees that are dedicated pursuant to law to the payment of the debt service on revenue bonds, notes, or other obligations authorized under this section, the provision and maintenance of reserves for that purpose, or the provision of working capital for or the maintenance, repair, reconstruction or improvement of the undertaking to which the revenue bonds, notes, or other obligations relate.

(6) The term "tax increments" means taxes, other than the special tax provided for in § 1-204.81 and pledged to the payment of general obligation indebtedness of the District, allocable to the increase in taxable value of real property or the increase in sales tax receipts, each from a certain date or dates, in prescribed areas, to the extent that such increases are not otherwise exclusively committed to another purpose and as further provided for pursuant to an act of the Council.

(Dec. 24, 1973, 87 Stat. 809, Pub. L. 93-198, title IV, § 490; Dec. 28, 1977, 91 Stat. 1612, Pub. L. 95-218; Apr. 12, 1980, 94 Stat. 335, Pub. L. 96-235; Dec. 23, 1981, 95 Stat. 1493, Pub. L. 97-105, § 16; Oct. 15, 1982, 96 Stat. 1614, Pub. L.

97-328; Aug. 6, 1996, 110 Stat. 1696, Pub. L. 104-184, §§ 2(a), (b), (c)(1); Aug. 5, 1997, 111 Stat. 773, Pub. L. 105-33, § 11508; Nov. 22, 2000, 114 Stat. 2440, Pub. L. 106-522, § 160(a)(1).)

Cross references. — General fund and special accounts, industrial revenue bond program, see § 47-131.

Housing finance agency, delegation of Council authority to issue revenue bonds, see § 42-2702.06.

National capital revitalization corporation; revenue bonds, notes, or other obligations, see § 2-1219.18.

Public parking authority, Council delegation of power to issue revenue bonds, see § 50-2512.

Sports and entertainment commission, bonds, issuance, terms, see § 3-1412.

Sports and entertainment commission, Council delegation of bond and note issuance authority, see § 3-1411.

Tax increment financing, bond authorization and forward commitment, see § 2-1217.02.

Washington convention center authority, delegation of council authority to issue bonds, see § 10-1202.09.

Water and sewer authority, delegation of Council authority to issue bonds, see § 34-2202.08.

Section references. — This section is referred to in §§ 1-204.46, 1-204.48, 1-206.03, 1-308.01, 1-308.02, 1-308.03, 1-308.07, 1-325.43, 2-602, 2-1217.12, 2-1217.71, 2-1217.77, 2-1217.79, 2-1219.01, 2-1223.16, 6-209, 7-1831.03, 10-1601.02, 10-1601.03, 10-1602.02, 10-1602.03, 34-2202.01, 42-2812.02, 42-2812.03, 42-2812.04, and 47-335.

Prior Codifications. — 1981 Ed., § 47-334. 1973 Ed., § 47-254.

Effect of amendments. — Public Law 106-522 redesignated subsections (i) through (m) as subsections (j) through (n), respectively; and added a new subsec. (i).

Temporary legislation. — For temporary (225 day) additions, see §§ 2 to 16 of Retail Incentive Temporary Act of 2003 (D.C. Law 15-58, December 9, 2003, law notification 51 DCR 1793).

Emergency legislation. — For temporary (90 day) addition of tax increment financing for retail development provisions, see § 2 of Retail Incentive Emergency Act of 2003 (D.C. Act 15-140, July 29, 2003, 50 DCR 6868).

For temporary (90 day) addition of tax increment financing for retail development, see §§ 2 to 17 of Retail Incentive Congressional Review Emergency Act of 2003 (D.C. Act 15-214, November 7, 2003, 50 DCR 10011).

For temporary (90 day) addition of tax increment financing for retail development, see §§ 2 to 17 of Retail Incentive Second Congressional Review Emergency Act of 2004 (D.C. Act 15-482, July 19, 2004, 51 DCR 7820).

Delegation of Authority. — Delegation of authority under Ottenberg's Bakers Inc., Projects Revenue Bond Act of 1984, see Mayor's Order 84-188, October 23, 1984.

Delegation of functions under section 490(e)(6) of the District of Columbia Self-Government and Governmental Reorganization Act of 1973 as amended: See Mayor's Order 85-39, April 1, 1985.

Delegation of contracting authority, see Mayor's Order 91-92, June 7, 1992.

Delegation of functions under s 490(e)(6) of the D.C. Self-Government and Government Reorganization Act of 1973, as amended, D.C. Code s 1-204.90(e)(6): See Mayor's Orders 91-154, October 1, 1991; 92-73, June 16, 1992; 93-170, October 22, 1993.

Delegation of functions under Acts Authorizing the Issuance of Revenue Bonds, Notes and Other Obligations: See Mayor's Order 93-104, July 15, 1993.

Delegation of Authority under the District of Columbia Home Rule Act, see Mayor's Order 98-95, June 16, 1998 (45 DCR 4571).

Delegation of authority under sections 490(a)(4) and (e)(6) of the District of Columbia Home Rule Act, see Mayor's Order 2000-1, January 7, 2000 (47 DCR 1011).

Delegation of authority under sections 490(a)(4) and (e)(6) of the District of Columbia Home Rule Act, as amended, and the George Washington University Revenue Bond Project Approval Resolution of 1999, see Mayor's Order 2000-24, February 9, 2000 (47 DCR 1036).

Delegation of authority under sections 490(a)(4) and (e)(6) of the District of Columbia Home Rule Act, as amended, and the American Red Cross Revenue Bond Project Approval Resolution of 1999, see Mayor's Order 2000-25, February 9, 2000 (47 DCR 1037).

Delegation of authority under sections 490(a)(4) and (e)(6) of the District of Columbia Home Rule Act, as amended, to the CFO with Respect to Bonds, Notes or Other Obligations of the Public Welfare Foundation, et al., see Mayor's Order 2000-48, March 29, 2000 (47 DCR 4723).

Delegation of authority under sections 490(a)(4) and (e)(6) of the District of Columbia Home Rule Act, see Mayor's Order 2000-69, April 28, 2000 (47 DCR 4751).

Delegation of authority under sections 490(a)(4) and (e)(6) of the District of Columbia Home Rule Act, as amended, Concerning Certain Industrial Revenue Bond Transactions, see Mayor's Order 2000-90, June 7, 2000 (47 DCR 5268).

Delegation of authority under sections 490(a)(4) and (e)(6) of the District of Columbia Home Rule Act, as amended, Concerning Certain Industrial Revenue Bond Transactions, see Mayor's Order 2000-103, June 27, 2000 (47 DCR 5785).

"Medlantic Healthcare Group, Inc., Revenue Bond Project Approval Resolution of 1995: Pursuant to Resolution 11-163, effective November 7, 1995, the Council approved the loan of proceeds from the issuance and sale of District of Columbia Revenue Bonds to Medlantic Healthcare Group, Inc., d/b/a Washington Hospital Center, and National Rehabilitation Hospital ("Medlantic").

Resolutions. — Carnegie Endowment for International Peace Revenue Bond Project Approval Resolution of 1996: Pursuant to Resolution 11-203, effective January 4, 1996, the Council approved the Carnegie Endowment for International Peace Revenue Bond Project.

American University Revenue Bond Project Approval Resolution of 1996: Pursuant to Resolution 11-416, effective July 3, 1996, the Council approved the loan of proceeds from the issuance and sale of District of Columbia revenue bonds to the American University Revenue Bond Project.

Georgetown University Revenue Bond Project Approval Resolution of 1996: Pursuant to Resolution 11-417, effective July 3, 1996, the Council approved the loan of proceeds from the issuance and sale of District of Columbia revenue bonds to the Georgetown University Revenue Bond Project.

Howard University Revenue Bond Project Approval Resolution of 1996: Pursuant to Resolution 11-418, effective July 3, 1996, the Council approved the loan of proceeds from the issuance and sale of District of Columbia revenue bonds to the Howard University Revenue Bond Project.

Lucy Webb Hayes National Training School for Deaconesses and Missionaries, in care of Sibley Memorial Hospital, Hospital Revenue Bond Project Approval Resolution of 1996: Pursuant to Resolution 11-524, effective October 1, 1996, the Council approved the issuance, sale, and delivery of District of Columbia Revenue Bonds and the loan of proceeds thereof to assist in the financing, refinancing, or reimbursing of costs related to the Lucy Webb Hayes National Training School for Deaconesses and Missionaries, in care of Sibley Memorial Hospital.

Individual Development, Inc. (Successor to We Care Projects, Inc.) Revenue Bond Project Emergency Approval Resolution of 1996: Pursuant to Resolution 11-670, effective December 3, 1996, the Council approved, on an emergency basis, the issuance, sale, and delivery of District of Columbia revenue bonds and the loan of proceeds thereof to assist in the financing, refinancing, or reimbursing of costs related to

certain intermediate care residential facilities for the mentally retarded owned and operated by Individual Development, Inc. (Successor to We Care Projects, Inc.).

Resolution 13-97, the "Young Men's Christian Association of Metropolitan Washington Revenue Bond Project Emergency Approval

Resolution of 1999", was approved effective March 16, 1999.

Resolution 13-99, the "Whitman-Walker Clinic Revenue Bond Project Emergency Approval Resolution of 1999", was approved effective March 16, 1999.

Resolution 13-101, the "Georgetown University Revenue Refunding Bond Project Emergency Approval Resolution of 1999", was approved effective March 16, 1999.

Resolution 13-127, the "Americans United for Separation of Church and State Revenue Bond Project Emergency Resolution of 1999", was approved effective May 4, 1999.

Resolution 13-153, the "Army Distaff Foundation, Inc. Revenue Bond Project Emergency Approval Resolution of 1999", was approved effective June 8, 1999.

Resolution 13-155, the "Gems, Incorporated Revenue Bond Project Emergency Approval Resolution of 1999", was approved effective June 8, 1999.

Resolution 13-207, the "Catholic University of America Revenue Bond Project Emergency Approval Resolution of 1999", was approved effective July 6, 1999.

Resolution 13-209, the "President and Directors of Gonzaga College Revenue Bond Project Emergency Approval Resolution of 1999", was approved effective July 6, 1999.

Resolution 13-211, the "Washington Home, Inc. Revenue Bond Project Emergency Approval Resolution of 1999", was approved effective July 6, 1999.

Resolution 13-213, the "Planned Parenthood Federation of America, Inc. Revenue Bond Project Emergency Approval Resolution of 1999", was approved effective July 6, 1999.

Resolution 13-215, the "819 7th Street, LLC Revenue Bond Project Emergency Approval Resolution of 1999", was approved effective July 6, 1999.

Resolution 13-217, the "Arnold & Porter Enterprise Zone Revenue Bonds Project Emergency Approval Resolution of 1999", was approved effective July 6, 1999.

Resolution 13-323, the "American Immigration Lawyers Association Revenue Bond Project Emergency Approval Resolution of 1999", was approved effective October 5, 1999.

Resolution 13-341, the "American National Red Cross Revenue Bond Project Approval Resolution of 1999", was approved effective November 2, 1999.

Resolution 13-342, the "George Washington University Revenue Bond Project Approval

Resolution of 1999", was approved effective November 2, 1999.

Resolution 13-358, the "800 8th Street, N.W., L.L.C. Revenue Bond Project Emergency Approval Resolution of 1999", was approved effective November 2, 1999.

Resolution 13-405, the "District of Columbia Tax Increment Revenue Bond Gallery Place Project Emergency Approval Resolution of 1999", was approved effective December 7, 1999.

Resolution 13-500, the "Community Academy Public Charter School Revenue Bond Project Emergency Approval Resolution of 2000", was approved effective March 7, 2000.

Resolution 13-502, the "Public Welfare Foundation, Inc. Revenue Bond Project Emergency Approval Resolution of 2000", was approved effective March 7, 2000.

Resolution 13-504, the "Smithsonian Institution Revenue Bond Project Emergency Approval Resolution of 2000", was approved effective March 7, 2000.

Resolution 13-510, the "District of Columbia Tax Increment Revenue Bond Mandarin Hotel Project Emergency Approval Resolution of 2000", was approved effective March 7, 2000.

Resolution 13-526, the "American Chemical Society Revenue Bond Project Emergency Approval Resolution of 2000", was approved effective April 18, 2000.

Resolution 13-540, the "Kingsbury Center, Inc. Revenue Bond Project Emergency Approval Resolution of 2000", was approved effective May 19, 2000.

Resolution 13-557, the "World Wildlife, Inc. Revenue Bond Project Emergency Approval Resolution of 2000", was approved effective June 6, 2000.

Resolution 13-559, the "National Geographic Society Revenue Bond Project Emergency Approval Resolution of 2000", was approved effective June 6, 2000.

Resolution 13-561, the "Hotel 1225 LLC Enterprise Zone Facility Bonds Project Emergency Approval Resolution of 2000", was approved effective June 6, 2000.

Resolution 13-563, the "Fort Lincoln New Town/Premium Distributors, L.L.C. Revenue Bond Project Emergency Approval Resolution of 2000", was approved effective June 6, 2000.

Resolution 13-634, the "Fourteenth and Irving Ventures Revenue Bond Project Emergency Approval Resolution of 2000", was approved effective July 11, 2000.

Resolution 13-636, the "National Child Day Care Association Revenue Bond Project Emergency Approval Resolution of 2000", was approved effective July 11, 2000.

Resolution 13-638, the "St. Patrick's Episcopal Day School Revenue Bond Project Emergency Approval Resolution of 2000", was approved effective July 11, 2000.

Resolution 13-675, the "HF Enterprises Enterprise Zone Facility Bonds Project Emergency Approval Resolution of 2000", was approved effective October 3, 2000.

Resolution 13-713, the "Gallery Place Project Modification Emergency Approval Resolution of 2000", was approved effective November 8, 2000.

Resolution 13-733, the "MedStar Health Revenue Bond Project Emergency Approval Resolution of 2000", was approved effective December 5, 2000.

Resolution 13-745, the "Mandarin Hotel Project Modification Approval Resolution of 2000", was approved effective December 19, 2000.

Resolution 13-786, the "Gallery Place Project Bond Maturity Modification Emergency Approval Resolution of 2000", was approved effective December 19, 2000.

Resolution 13-788, the "Tax Increment Revenue Notes International Spy Museum Emergency Approval Resolution of 2000", was approved effective December 22, 2000.

Resolution 14-46, the "National Museum of Washington in the Arts Revenue Bond Project Approval Resolution of 2001", was approved effective March 6, 2001.

Resolution 14-47, the "Seed Public Charter School of Washington, D.C., Revenue Bond Project Approval Resolution of 2001", was approved effective March 6, 2001.

Resolution 14-48, the "Georgetown University Revenue Bond Project Approval Resolution of 2001", was approved effective March 6, 2001.

Resolution 14-97, the "Trinity College Revenue Bond Project Approval Resolution of 2001", was approved effective May 1, 2001.

Resolution 14-98, "The Henry J. Kaiser Family Foundation Revenue Bond Project Approval Resolution of 2001", was approved effective May 1, 2001.

Resolution 14-110, the "United Planning Organization Revenue Bond Project Emergency Approval Resolution of 2001", was approved effective May 15, 2001.

Resolution 14-124, the "National Public Radio, Inc. Revenue Bond Project Emergency Approval Resolution of 2001", was approved effective June 5, 2001.

Resolution 14-140, "The Field School, Inc. Revenue Bond Project Approval Resolution of 2001", was approved effective June 26, 2001.

Resolution 14-141, the "Historical Society of Washington, D.C. Revenue Bond Project Approval Resolution of 2001", was approved effective June 26, 2001.

Resolution 14-227, "Kmart Corporation Revenue Bond Project Approval Resolution of 2001", was approved effective October 16, 2001.

Resolution 14-242, the "Crowell & Moring LLP Enterprise Zone Revenue Bonds Project Approval Resolution of 2001", was approved effective November 6, 2001.

Resolution 14-243, the "DC Arena L.P. Revenue Bond Project Approval Resolution of 2001", was approved November 6, 2001.

Resolution 14-278, the "Penn Quarter Garage, L.L.C. Revenue Bond Project Approval Resolution of 2001", was approved effective December 4, 2001.

Resolution 14-327, "Washington Very Special Arts, Inc., and WVSA School For Arts In Learning, Inc., Revenue Bond Project Emergency Approval Resolution of 2002", was approved effective January 8, 2002.

Resolution 14-398, the "Children's Hospital Revenue Bond Project Approval Resolution of 2002", was approved effective April 9, 2002.

Resolution 14-399, the "Thurgood Marshall Center Trust, Inc. of Washington, D.C. Revenue Bond Project Approval Resolution of 2002", was approved effective April 9, 2002.

Resolution 14-400, the "Capital City Public Charter School, Inc. Revenue Bond Project Approval Resolution of 2002", was approved effective April 9, 2002.

Editor's notes. — Enactment upon adoption of federal legislation: Section 4 of D.C. Law 11-254 provided that "§§ 47-101, 47-117, 47-130, 47-301, 47-302, 47-303, 47-304, 47-304.1, 47-305, 47-310, 47-312, 47-317.1 through 47-317.6, 47-321 through 47-325, 47-327 through 47-331, and 47-332 through 47-334 of Title 47 §§ 1-204.41, 1-204.55, 1-204.50, 1-204.42, 1-204.43, 1-204.44, 1-204.46, 1-204.53, 1-204.47, 1-204.48, 1-204.49, 1-204.24a through 1-204.24e, 47-317.06, 1-204.61 through 1-204.65, 1-204.71 through 1-204.75, 1-204.81, 1-204.85, 1-204.86 and 1-204.90, 2001 Ed. of the District of Columbia Code shall be enacted as part of Title 47 upon the adoption by Congress of legislation so enacting these sections."

Request for Congressional action: Pursuant to § 501(b) of D.C. Law 10-188, the Council of the District of Columbia requested that Congress amend § 490(h)(3) of the District of Columbia Self-Government and Governmental Reorganization Act to read as follows:

"(3)(A) The fourth sentence of § 47-304 § 1-204.46 shall not apply to — (i) any amount (including the amount of any accrued interest or premium) obligated or expended from the proceeds of the sale of any revenue bond, note, or other obligation issued under paragraph (1) of this subsection. (ii) any amount obligated or expended for the payment of the principal of, interest on, or any premium for any revenue bond, note, or other obligation issued under paragraph (1) of this subsection. (iii) any amount obligated or expended to secure any revenue bond, note, or other obligation issued under paragraph (1) of this subsection, and. (iv) any amount obligated or expended for repair, maintenance, and capital improvements issued under paragraph (1) of this subsection.

"(B) Other operating obligations or expenditures shall be exempt from the fourth sentence of § 47-304 (§ 1-204.46, 2001 Ed.), except that if the operating obligations or expenditures are incurred prior to October 1, 1995, they shall be approved pursuant to the procedures set forth in § 47-304.1 (§ 1-204.53, 2001 Ed.)."

Oyster Elementary School Construction and Revenue Bonds: Section 169 of Pub. L. 105-277, the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, provided that, notwithstanding § 1-206.02(c)(1) of the D. C. Code, the Oyster Elementary School Construction and Revenue Bond Act of 1998 D.C. Law 12-174 shall take effect on October 21,

Part F

INDEPENDENT AGENCIES AND AUTHORITIES.

§ 1-204.91. Board of Elections amendments [Omitted].

Editor's notes. — The text of § 1-204.91 is omitted because the corresponding text of sec-

tion 491 of Public Law 93-198 amended another law.

§ 1-204.92. Zoning Commission amendments [Omitted].

Editor's notes. — The text of § 1-204.92 is omitted because the corresponding text of sec-

tion 492 of Public Law 93-198 amended another law.

§ 1-204.93. Public Service Commission.

There shall be a Public Service Commission whose function shall be to insure that every public utility doing business within the District of Columbia is

required to furnish service and facilities reasonably safe and adequate and in all respects just and reasonable. The charge made by any such public utility for any facility or services furnished, or rendered, or to be furnished or rendered, shall be reasonable, just, and nondiscriminatory. Every unjust or unreasonable or discriminating charge for such facility or service is prohibited and is hereby declared unlawful.

(Dec. 24, 1973, 87 Stat. 811, Pub. L. 93-198, title IV, § 493(a).)

Prior Codifications. — 1981 Ed., § 43-402. 1973 Ed., § 43-201a.

Editor's notes. — Deregulation of streetlighting service: Section 130 of H.R. 3067, amended by H.R. 99-419, incorporated in Pub. L. 99-190 by § 101(c), the D.C. Appropriation Act, 1986, provided that the Public Service Commission is authorized to order and to approve the deregulation of streetlighting service

to the District of Columbia as provided in its opinion and order in Formal Case No. 813, dated July 12, 1984 (Order No. 8056), this section, § 34-1101, and § 34-1407, and provided that the provisions of this opinion and order regarding deregulation of streetlighting service are hereby ratified and declared to be in effect as of July 12, 1984 and shall continue to be in effect until revoked or rescinded.

CASE NOTES

ANALYSIS

Function of Commission.

In general.

Reasonableness.

Function of Commission.

Function of Public Service Commission is to ensure maintenance of reasonable rates. D.C. Code 1981, § 43-402. *Chesapeake & Potomac Tel. Co. v. Public Service Com.*, 498 A.2d 1167, 1985 D.C. App. LEXIS 502 (1985).

In general.

The question of unjust discrimination in customer classification for rate-making is not a mere question of fact; the selection of classification criteria is, in large measure, a question of regulatory policy committed to the informed discretion of the Public Service Commission (PSC). *Office of the People's Counsel v. PSC of the Dist. of Columbia*, 797 A.2d 719, 2002 D.C. App. LEXIS 97 (2002).

Public Service Commission's (PSC) decision in electric rate case to disallow portion of electric utility's demand-side management (DSM) program costs was not arbitrary but, rather, Commission's order explained application of criteria to utility's evidence under prudent management standard; Commission found that utility had failed to explain why actual costs for some programs were greater than projected costs and why this level of total expenditures, as opposed to some lesser amount, was necessary for utility to implement its demand-side management programs. D.C. Code 1981, §§ 43-402, 43-906. *Potomac Elec. Power Co. v. Public Serv. Comm'n.*, 661 A.2d 131, 1995 D.C. App. LEXIS 121 (1995).

Public Service Commission's decision in electric rate case to disallow 25% as particular percentage by which electric utility's demand-side management (DSM) program costs were reduced was arbitrary; Commission did not provide full and clear explanation of why Commission chose 25% as appropriate percentage of demand-side management costs to disallow, and all reasoning underlying recommendation of sole witness suggesting 25% disallowance was either subsequently rejected by Commission or withdrawn by party that presented witness. D.C. Code 1981, §§ 43-402, 43-906. *Potomac Elec. Power Co. v. Public Serv. Comm'n.*, 661 A.2d 131, 1995 D.C. App. LEXIS 121 (1995).

Public Service Commission's (PSC) decision in electric rate case to disallow electric utility's projected employee benefit costs was neither arbitrary nor capricious but, rather, was reasonable exercise of Commission's discretion, where utility's evidence in support of its projected cost recovery request consisted solely of cursory explanations of how costs were calculated, nor did those explanations make clear why that added cost burden should be passed on to ratepayers. D.C. Code 1981, §§ 43-402, 43-906. *Potomac Elec. Power Co. v. Public Serv. Comm'n.*, 661 A.2d 131, 1995 D.C. App. LEXIS 121 (1995).

Substantial evidence supported Public Service Commission's (PSC) finding in electric rate case that electric utility had not shown that all its demand-side management (DSM) programs were prudently managed; utility's voluminous evidence explaining and cataloguing its demand-side management expenditures did not address question of why it was necessary to spend money at those particular levels, and

evidence did not explain what, if any, benefits would inure to ratepayers as result of utility's levels of spending on demand-side management programs. D.C. Code 1981, §§ 43-402, 43-906. *Potomac Elec. Power Co. v. Public Serv. Comm'n.*, 661 A.2d 131, 1995 D.C. App. LEXIS 121 (1995).

Assuming that presumption, that ordinary business expenditures are prudently incurred, applied to electric utility's demand-side management (DSM) program costs in electric rate case, record contained sufficient evidence to overcome presumption; reasonableness of utility's demand-side management program costs was specifically designated as contested issue, and utility's own exhibits showed discrepancy between actual costs and budgeted and projected costs for demand-side management programs. D.C. Code 1981, §§ 43-402, 43-906. *Potomac Elec. Power Co. v. Public Serv. Comm'n.*, 661 A.2d 131, 1995 D.C. App. LEXIS 121 (1995).

Reasonableness.

Telephone company's tariff amendment permitting customers with home-based businesses to pay residential rates, if the predominant or primary use was domestic, even if the business use was more than incidental, could be approved as nondiscriminatory even without call volume data; the Public Service Commission (PSC) was not required to collect such data, relied on reasonable criteria for charging residential rates based on residential location, primary domestic use as reported by the customer, and a residential, rather than business, directory listing, was not obliged to equalize the returns from different customer classes, and could classify customers on the basis of factors other than cost of service, including the nature of their use of the service. *Office of the People's*

Counsel v. PSC of the Dist. of Columbia, 797 A.2d 719, 2002 D.C. App. LEXIS 97 (2002).

The Public Service Commission's (PSC) duty to require nondiscriminatory utility charges is deliberately broad and gives to the Commission authority to formulate its own standards and to exercise its rate-making function free from judicial interference, provided the rates fall within a zone of reasonableness which assures that the Commission is safeguarding the public interest, that is, the interests of both investors and consumers. *Office of the People's Counsel v. PSC of the Dist. of Columbia*, 797 A.2d 719, 2002 D.C. App. LEXIS 97 (2002).

The basic reasonableness inquiry with regard to public utility rates is simply whether customers have paid different amounts for the same service under the same circumstances. *Office of the People's Counsel v. PSC of the Dist. of Columbia*, 797 A.2d 719, 2002 D.C. App. LEXIS 97 (2002).

Utility rate cannot be deemed "reasonable" simply because expert agency says it is. D.C. Code 1981, §§ 43-402, 43-906. *Potomac Elec. Power Co. v. Public Serv. Comm'n.*, 661 A.2d 131, 1995 D.C. App. LEXIS 121 (1995).

For purposes of Public Service Commission (PSC) regulation of public utility rates, prudent management standard is means of determining which costs are reasonable and ensuring that only those costs are passed on to customers. D.C. Code 1981, § 43-402. *Potomac Elec. Power Co. v. Public Serv. Comm'n.*, 661 A.2d 131, 1995 D.C. App. LEXIS 121 (1995).

Public Service Commission's (PSC) responsibility to ensure reasonableness of public utility rate increase is particularly important when cost sought to be recovered represents projected, one-time, out of test period adjustment. D.C. Code 1981, § 43-402. *Potomac Elec. Power Co. v. Public Serv. Comm'n.*, 661 A.2d 131, 1995 D.C. App. LEXIS 121 (1995).

§ 1-204.94. Armory Board amendments [Omitted].

Editor's notes. — The text of § 1-204.94 is omitted because the corresponding text of sec-

tion 494 of Public Law 93-198 amended another law.

§ 1-204.95. Board of Education [Repealed].

Repealed.

(Dec. 24, 1973, 87 Stat. 811, Pub. L. 93-198, title IV, § 495; July 7, 2000, D.C. Law 13-159, § 2, 47 DCR 2212; June 1, 2007, 121 Stat. 223, Pub. L. 110-33, § 1(a)(2).)

Section references. — This section is referred to in §§ 1-207.19, 38-1101, 38-1121 and 38-1201.03.

Prior Codifications. — 1981 Ed., § 31-101(a).

Legislative history of Law 13-159. — Law 13-159, the "School Governance Charter Amendment Act of 2000" was introduced in Council and assigned Bill No. 13-469. The Bill was adopted on first, first amended and second

readings on January 18, 2000, February 1, 2000 and February 17, 2000, respectively. Signed by the Mayor on March 1, 2000, it was assigned Act No. 13-295. The citizens of the District of Columbia voted on the legislation on June 27, 2000. The Board of Elections and Ethics certified (ratified) the results of the election on July 7, 2000. D.C. Law 13-159 became effective on July 7, 2000, pursuant to section 1 of the Public Law 106-226.

Effective date. — Section 5 of D.C. Law 13-159 provided: "This act shall take effect following ratification by a majority of the registered qualified electors of the District of Columbia voting in a referendum held for such purpose and a 35-day period of Congressional review as provided in section 303 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-203.03), and publication in the District of Columbia Register."

Editor's notes. — Section 1 of Public Law 106-226 provided: "Section 1. Waiver of congressional review period for school governance charter amendment act of 2000.

"Notwithstanding section 303 of the District of Columbia Home Rule Act or any provision of the School Governance Charter Amendment Act of 2000, the School Governance Charter Amendment Act of 2000 shall take effect upon the date such Act is ratified by a majority of the registered qualified electors of the District of Columbia voting in a referendum held to ratify such Act."

Paragraphs (1) and (2) of subsection (a) expired on July 7, 2004.

In sections 901 to 903 of Law 17-9 the Council of the District of Columbia requested that Congress repeal this section.

CASE NOTES

ANALYSIS

Candidates, campaigning and conduct of elections.

Capacity to sue or be sued.

Declaratory relief.

Meetings.

Powers of judiciary.

Validity of prior provisions.

Candidates, campaigning and conduct of elections.

Use of political party endorsements by board of education candidate in her campaign was not prohibited. D.C. Code 1981, § 31-101(a). *Hawkins v. Butler-Truesdale*, 584 A.2d 1241, 1990 D.C. App. LEXIS 329 (1990).

Board of education candidate did not appear on ballot as part of any "slate," so as to violate statute requiring election to be conducted on nonpartisan basis, even though she linked her name with those of democratic party candidates for other offices. D.C. Code 1981, § 31-101(a). *Hawkins v. Butler-Truesdale*, 584 A.2d 1241, 1990 D.C. App. LEXIS 329 (1990).

Fact that board of education candidate held elective office of president of ward democrats when she ran for membership on board of education did not place her in violation of statute requiring that board elections be conducted on nonpartisan basis. D.C. Code 1981, § 31-101(a, c). *Hawkins v. Butler-Truesdale*, 584 A.2d 1241, 1990 D.C. App. LEXIS 329 (1990).

Statute providing that election of District of Columbia Board of Education members shall be conducted on nonpartisan basis does not prohibit a candidate from receiving approval of political party and using benefit of such ap-

proval to his advantage. D.C. Code § 31-101(a). *Boone v. Taylor*, 256 A.2d 411, 1969 D.C. App. LEXIS 297 (App. 1969).

Capacity to sue or be sued.

Because statute establishing District of Columbia Board of Education did not provide that Board might sue or be sued, Board was not suable entity and could not be sued, and though plaintiffs who sought injunctive relief under Education of the Handicapped Act, inter alia, could name individual members of Board as parties and also name other public officials as parties, to extent that claim for injunctive relief was properly directed at those board members or officers, any claim for damages was to name district as party if district funds were to be reached. Education of the Handicapped Act, § 601 et seq., as amended, 20 U.S.C. § 1400 et seq.; Rehabilitation Act of 1973, § 504, as amended, 29 U.S.C. § 794; 42 U.S.C. § 1983; U.S. Const. Amend. 5; D.C. Code 1981, §§ 31-101, 31-1511. *Tschanneral v. District of Columbia Bd. of Education*, 594 F. Supp. 407, 1984 U.S. Dist. LEXIS 23620 (1984).

A suit for damages against the District of Columbia Board of Education cannot survive, as statute creating that Board does not provide that the Board is a body corporate having the capability to sue or be sued. D.C. Code 1981, § 31-101 et seq. *Parker v. District of Columbia*, 588 F. Supp. 518, 1983 U.S. Dist. LEXIS 15030 (1983).

Under the statutes which created the District of Columbia Board of Education, the Board was not a suable entity. D.C. Code § 31-101(a). *Kelley v. Morris*, 400 A.2d 1045, 1979 D.C. App. LEXIS 343 (1979).

Declaratory relief.

Claim by members of District of Columbia

Board of Education of entitlement to declaratory or injunctive relief, pursuant to First Amendment, from enforcement of order issued by District of Columbia Financial Responsibility and Management Assistance Authority delegating majority of Board's authority to run District's schools to District's Board of Trustees, was premature, absent any evidence that members of Board of Education had suffered or were about to suffer any injury to their First Amendment rights, or any threat that they would be forced or required pursuant to statute to vote contrary to their beliefs. U.S. Const. Art. 3, § 1 et seq.; Amend. 1; District of Columbia Financial Responsibility and Management Assistance Act of 1995, § 1 et seq., 109 Stat. 97. *Shook v. District of Columbia Fin. Responsibility & Mgmt. Assistance Auth.*, 964 F. Supp. 416, 1997 U.S. Dist. LEXIS 5929 (1997), affirmed in part and reversed in part by 132 F.3d 775, 328 U.S. App. D.C. 74, 1998 U.S. App. LEXIS 83 (1998).

Meetings.

District of Columbia Board of Education's adoption of evaluative standards by which to assess the performance of the present superintendent of schools was not a "final policy decision" within the meaning of statute providing, in part, that "no final policy decision on such other matters may be made by the Board of Education in a meeting (or part thereof) closed to the public." D.C. Code § 31-101(e). *Goodwin v. District of Columbia Board of Education*, 343 A.2d 63, 1975 D.C. App. LEXIS 221 (1975).

Given the express intent of Congress to allow certain meetings of the District of Columbia Board of Education to be closed and the embodiment of that intent in a specific statute, that statute remained in effect as a qualification of later statute requiring meetings of the District government to be open to the public. *District of Columbia Self-Government and Governmental Reorganization Act*, §§ 742(a), 761, 87 Stat. 774; D.C. Code § 31-101(e). *Goodwin v. District of Columbia Board of Education*, 343 A.2d 63, 1975 D.C. App. LEXIS 221 (1975).

Powers of judiciary.

The official act of a judge of the United States District Court for the District of Columbia in participating in selection of District of Columbia board of education members does not in and of itself preclude on due process grounds the ability of the judge to decide fairly the merits of litigation challenging validity of performance by board member of his duties as such. D.C. Code 1961, § 31-101. *Hobson v. Hansen*, 265 F.Supp. 902, 1967 U.S. Dist. LEXIS 11602 (D.D.C.1967).

Validity of prior provisions.

Pupils in public schools administered by District of Columbia board of education and par-

ents of those pupils had sufficient interest to challenge authority of the board to administer the schools on theory that statute providing that members of board shall be appointed by United States District Court judges of the District of Columbia is unconstitutional. D.C. Code 1961, § 31-101. *Hobson v. Hansen*, 265 F.Supp. 902, 1967 U.S. Dist. LEXIS 11602 (D.D.C.1967).

The fact that issue of basic authority of District of Columbia board of education to administer schools might escape resolution unless pupils and their guardians or parents had standing to challenge validity of statute purportedly giving that authority argued for resolving doubts, if any, as to standing in favor of the pupils, parents, and guardians, in absence of hard and fast rule governing standing to sue. D.C. Code 1961, § 31-101. *Hobson v. Hansen*, 265 F.Supp. 902, 1967 U.S. Dist. LEXIS 11602 (D.D.C.1967).

Power conferred upon judges by statute stating that members of District of Columbia board of education shall be appointed by United States District Court judges of District of Columbia does not violate doctrine of separation of powers. D.C. Code 1961, § 31-101. *Hobson v. Hansen*, 265 F.Supp. 902, 1967 U.S. Dist. LEXIS 11602 (D.D.C.1967).

Appointive power conferred by Congress under statute providing that members of District of Columbia board of education shall be appointed by United States District Court judges of the District of Columbia does not violate due process though litigation might arise before the district court over manner in which the board administers the schools. D.C. Code 1961, § 31-101. *Hobson v. Hansen*, 265 F.Supp. 902, 1967 U.S. Dist. LEXIS 11602 (D.D.C.1967).

Constitutional provision that Congress may by law vest appointment of such inferior officers as they think proper in the President alone, in the courts of law, or in heads of departments empowered Congress to enact statute providing that members of the District of Columbia board of education shall be appointed by United States District Court judges of the District of Columbia. U.S. Const. art. 2, § 2, cl. 2; D.C. Code 1961, § 31-101. *Hobson v. Hansen*, 265 F.Supp. 902, 1967 U.S. Dist. LEXIS 11602 (D.D.C.1967).

The fact that in a number of instances Congress has conferred appointive power upon court or judges of United States District Court for the District of Columbia was not conclusive on issue of validity of statute permitting appointment of members of District of Columbia board of education by United States District Court judges of the District of Columbia but demonstrated the deep-seated congressional view of the constitutional issue and was entitled to weight in judicial decision on that issue. D.C. Code 1961, § 31-101. *Hobson v. Hansen*,

265 F.Supp. 902, 1967 U.S. Dist. LEXIS 11602 (D.D.C1967).

The validity of congressional conference upon United States District Court judges of District of Columbia of power to appoint District of Columbia board of education members is not to be denied merely because an appointee in carrying out his own separation functions might become involved in controversies; the board members are accountable under the law for the manner in which they perform their duties. D.C. Code 1961, § 31-101. *Hobson v. Hansen*, 265 F.Supp. 902, 1967 U.S. Dist. LEXIS 11602 (D.D.C1967).

Court could not presume that in any future case, which might involve performance by members of District of Columbia board of education of their duties, a denial of due process would occur by reason of statute empowering United States District Court judges of the District of Columbia to appoint the board members. D.C. Code 1961, § 31-101. *Hobson v. Han-*

sen, 265 F.Supp. 902, 1967 U.S. Dist. LEXIS 11602 (D.D.C1967).

Constitutional provision empowering Congress to exercise exclusive legislation in all cases whatsoever over the District of Columbia gave Congress power to enact statute providing that members of the District of Columbia board of education shall be appointed by United States District Court judges of the district. U.S. Const. art. 1, § 8, cl. 17; D.C. Code 1961, § 31-101. *Hobson v. Hansen*, 265 F.Supp. 902, 1967 U.S. Dist. LEXIS 11602 (D.D.C1967).

Issue as to constitutionality or unconstitutionality of statute, authorizing members of board of education of public schools of District of Columbia to be appointed by United States District Court judges was not frivolous and matter must be referred to three-judge court. D.C. Code 1961, § 31-101; 18 U.S.C. §§ 2282, 2284. *Hobson v. Hansen*, 252 F. Supp. 4, 1966 U.S. Dist. LEXIS 7783 (D.D.C1966).

§ 1-204.96. Independent financial management, personnel, and procurement authority of District of Columbia Water and Sewer Authority.

(a) *Financial Management, Personnel, and Procurement Authority.* — Notwithstanding any other provision of this chapter or any District of Columbia law, the financial management, personnel, and procurement functions and responsibilities of the District of Columbia Water and Sewer Authority shall be established exclusively pursuant to rules and regulations adopted by its Board of Directors. Nothing in the previous sentence may be construed to affect the application to the District of Columbia Water and Sewer Authority of § 1-204.45a, § 1-204.51(d), § 1-204.53(c), or § 1-204.90(g).

(b) *Consistency With Existing Authorizing Law.* — The rules and regulations adopted by the Board of Directors of the District of Columbia Water and Sewer Authority to establish the financial management, personnel, and procurement functions and responsibilities of the Authority shall be consistent with the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, as such Act is in effect as of January 1, 2008.

(Dec. 24, 1973, 87 Stat. 811, Pub. L. 93-198, title IV, § 496, as added July 15, 2008, 122 Stat. 2491, Pub. L. 110-273, § 3(a)(2).)

References in text. — The “Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of

1996,” referred to in subsec. (b), is D.C. Law 11-111, which is codified primarily as § 34-2201.01 et seq.

Part G

INITIATIVES, REFERENDUMS, AND RECALLS.

Subpart 1—Initiative and Referendum.

§ 1-204.101. Definitions.

(a) The term “initiative” means the process by which the electors of the District of Columbia may propose laws (except laws appropriating funds) and present such proposed laws directly to the registered qualified electors of the District of Columbia for their approval or disapproval.

(b) The term “referendum” means the process by which the registered qualified electors of the District of Columbia may suspend acts of the Council of the District of Columbia (except emergency acts, acts levying taxes, or acts appropriating funds for the general operation budget) until such acts have been presented to the registered qualified electors of the District of Columbia for their approval or rejection.

(Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199.)

Cross references. — Elections, “proposer” defined, see § 1-1001.02.

Prior Codifications. — 1981 Ed., § 1-281.
1973 Ed., § 1-181.

Legislative history of Law 2-46. — Law 2-46 was introduced in Council and assigned Bill No. 2-2, which was referred to the Committee on Government Operations. The Bill was

adopted on first, amended first, and second readings on April 5, 1977, May 3, 1977 and May 17, 1977, respectively. Signed by the Mayor on June 14, 1977, it was assigned Act No. 2-46 and transmitted to both Houses of Congress for its review. Concurrent Resolutions 471 and 464 were approved by both Houses of Congress as required by the act.

CASE NOTES

ANALYSIS

Construction and application.
Construction with other laws.
Laws appropriating funds.
Matters subject to initiative, generally.
Powers of council.

Construction and application.

Charter Amendments control over inconsistent provision of Initiative, Referendum, and Recall Procedures Act (IPA). D.C. Code 1981, §§ 1-281 to 1-287, 1-291 to 1-295, 1-1320 to 1-1326. *Price v. District of Columbia Bd. of Elections & Ethics*, 645 A.2d 594, 1994 D.C. App. LEXIS 121 (1994).

District of Columbia initiative power regarding laws is coextensive with council's power to pass acts except to extent that right of initiative is otherwise limited beyond limitations on legislative authority of council. D.C. Code 1981, §§ 1-229(a), 1-281(a). *Hessey v. District of Columbia Bd. of Elections & Ethics*, 601 A.2d 3, 1991 D.C. App. LEXIS 318 (1991).

Proposed initiative, which sought to bar construction and operation of convention center, and which represented effort through both substantive and fiscal means to reverse legislative policy determination that District of Columbia should build and operate convention center, proposed a “law” within meaning of District of Columbia charter amendments relating to initiative proposals. D.C. Code 1980 Supp. § 1-181(a). *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

Construction with other laws.

Provision of Initiative, Referendum and Recall Procedures Act (IPA) that allows District of Columbia Board of Elections and Ethics to reject proposed initiative if measure authorizes or would have effect of authorizing discrimination prohibited the Human Rights Act is consistent with intent of Charter Amendments Act, which defines initiative as “the process by which the electors of the District of Columbia

may propose laws (except laws appropriating funds) and present such proposed laws directly to the registered qualified electors of the District of Columbia for their approval or disapproval,' and, therefore, was valid provision; provision did not impermissibly create new exception to initiative right. *Jackson et al. v. D.C. Board of Elections and Ethics*, 138 WLR 173 (Super. Ct. 2010).

Laws appropriating funds.

Initiative providing for substance abuse treatment as alternative to incarceration for certain drug offenses was an impermissible law appropriating funds in contravention of initiative process; initiative imposed numerous mandatorily-phrased obligations upon trial courts to effectuate its goals, initiative established strict time constraints within which obligations must be satisfied, courts would be unable to comply with mandatory duties in the absence of funding to establish and operate treatment programs contemplated by initiative, initiative did not condition court's compliance upon funding from council, and absent funding, initiative created outcome not weighed by voters and not consistent with purpose for which initiative was enacted. *D.C. Bd. of Elections v. District of Columbia*, 866 A.2d 788, 2005 D.C. App. LEXIS 14 (2005).

Measure which would intrude upon the discretion of the District of Columbia council to allocate District government revenues in the budget process is not a proper subject for initiative, whether or not the initiative would raise new revenues. *D.C. Bd. of Elections v. District of Columbia*, 866 A.2d 788, 2005 D.C. App. LEXIS 14 (2005).

Proposed initiative that would have prohibited "booting" motor vehicles, and required granting amnesty from penalties for late payment of traffic fines was not proper subject of initiative; proposed initiative would have negated Budget Request Act to extent act was based on projected revenues from those sources, and initiative improperly proposed a "laws appropriating funds." *D.C. Code 1981, §§ 1-281(a), 1-1320(b)(1)(D)*, 47-304. *Dorsey v. District of Columbia Bd. of Elections & Ethics*, 648 A.2d 675, 1994 D.C. App. LEXIS 183 (1994).

Limitation in District of Columbia initiative statute prohibiting electors from proposing laws appropriating funds applies to more than Budget Request Act; language of limitation must refer to council's role in District government's budget process. *D.C. Code 1981, §§ 1-227(e, f), 1-229(a), 1-233(c), 1-281(a), 1-285, 47-304, 47-313(a)*. *Hessey v. District of Columbia Bd. of Elections & Ethics*, 601 A.2d 3, 1991 D.C. App. LEXIS 318 (1991).

Since Court of Appeals must assume that District of Columbia Council did not enact

meaningless provision, statutory phrase "law appropriating funds" must be viewed as qualification on initiative right that extends beyond limitations placed on council's legislative powers under Self-Government and Governmental Reorganization Act. *D.C. Code 1981, § 1-281(a)*. *Hessey v. District of Columbia Bd. of Elections & Ethics*, 601 A.2d 3, 1991 D.C. App. LEXIS 318 (1991).

"Laws appropriating funds" as used in initiative statute permitting electors of District of Columbia to propose laws except laws appropriating funds means laws allocating funds; thus, right of initiative cannot extend to council's discretion to allocate revenues or to council's decision about when it would be necessary for efficient operation of government of District to establish special fund. *D.C. Code 1981, §§ 1-281(a), 47-130*. *Hessey v. District of Columbia Bd. of Elections & Ethics*, 601 A.2d 3, 1991 D.C. App. LEXIS 318 (1991).

Facts that right to overnight shelter initiative could be loosely denominated as entitlement program and contained provision for judicial review did not render initiative violative of "laws appropriating funds" exception to citizens' right to make laws through initiative process. *D.C. Code 1981, §§ 1-281, 3-601 et seq., 3-606*. *District of Columbia Bd. of Elections & Ethics v. District of Columbia*, 520 A.2d 671, 1986 D.C. App. LEXIS 331 (1986).

Proposed unemployment compensation initiative was not a proper subject of the initiative process pursuant to Initiative Procedures Act, since it was precluded by Charter Amendments Act's exception governing "laws appropriating funds." *D.C. Code 1981, §§ 1-281(a), 1-1301, 1-1302(10), 1-1320(b), 1-1326*. *District of Columbia Bd. of Elections & Ethics v. Jones*, 481 A.2d 456, 1984 D.C. App. LEXIS 472 (1984).

Proposed initiative regarding unemployment compensation would force District of Columbia government into making interest payments for borrowed funds and to seek additional appropriations for employer contributions to the unemployment compensation fund, and would thereby constitute an affirmative effort to appropriate funds—an action specifically excluded from right of initiative by Charter Amendments Act's "laws appropriating funds" exception. *D.C. Code 1981, §§ 1-281(a), 1-1301, 1-1320(b), 1-1326*. *District of Columbia Bd. of Elections & Ethics v. Jones*, 481 A.2d 456, 1984 D.C. App. LEXIS 472 (1984).

Initiative to prohibit smoking in indoor workplaces and indoor public places was a "law appropriating funds" that would have improperly intruded upon the discretion of the mayor and council in the budget process for the District of Columbia, by having a direct impact on restaurant tax revenues identified and allocated as part of budget process, and, as such, was not a proper subject matter for an initia-

tive. Restaurant Association of Metropolitan Washington v. D.C. Board of Elections and Ethics, 132 WLR 1301 (Super. Ct. 2004).

Superior court had equitable authority to render declaratory relief in case between Board of Elections and District of Columbia on issue of whether initiative measure violated "laws appropriating funds" exception to right of initiative. D.C. v. D.C. Board of Elections, 131 WLR 885 (Super. Ct. 2003).

Initiative measure making certain defendants eligible for court-ordered drug treatment was improper intrusion upon discretion of mayor and District of Columbia Council to allocate amount of funding for drug treatment that they determined could be provided within fiscal limitations facing District government and, as such, violated "laws appropriating funds" exception to right of initiative, even if coerced spending constituted only a very small portion of District's total budget. D.C. v. D.C. Board of Elections, 131 WLR 885 (Super. Ct. 2003).

Matters subject to initiative, generally.

Human Rights Act safeguards imposed by District Council on Board of Elections and Ethics, which required Board to refuse to accept any proposed initiative that would authorize, or have the effect of authorizing, discrimination prohibited by the Human Rights Act, were not inconsistent with the intent of the Initiative, Referendum, and Recall Charter Amendment Act (CAA) that gave citizens the right of initiative; the CAA was ambiguous as to whether there were other limitations on the right to initiative outside of exception for laws appropriating funds, and the CAA gave Council the authority to adopt acts as were necessary to carry out the purpose of the CAA. Jackson v. D.C. Bd. of Elections & Ethics, 999 A.2d 89, 2010 D.C. App. LEXIS 400 (2010), writ of certiorari denied by 131 S. Ct. 1001, 178 L. Ed. 2d 827, 2011 U.S. LEXIS 730, 79 U.S.L.W. 3419 (U.S. 2011).

"Affordable Housing Act" initiative requiring funds collected from developers to be deposited in trust fund to be used exclusively for construction of low income housing would improperly delay or condition District of Columbia council's allocation authority and would run afoul of provisions of Self-Government and Governmental Reorganization Act placing fiscal management responsibilities in Mayor and council and requiring council to establish special funds only when necessary for efficient government. D.C. Code 1981, §§ 1-281(a), 47-130. Hessey v. District of Columbia Bd. of Elections & Ethics, 601 A.2d 3, 1991 D.C. App. LEXIS 318 (1991).

Right to overnight shelter initiative did not impermissibly launch appropriations process, where decisions concerning implementation of

shelter initiative were still broadly vested in elected government. D.C. Code 1981, §§ 1-281, 3-601 et seq. District of Columbia Bd. of Elections & Ethics v. District of Columbia, 520 A.2d 671, 1986 D.C. App. LEXIS 331 (1986).

Overnight shelter initiative which set standards concerning provisions of shelter did not strip elected officials of discretion to make adjustments in funding of various projects, where initiative contained no self-actuating funding mechanisms, funding level for overnight shelter still rested within power of elected members of district government and Congress and decisions concerning implementation of shelter initiative were broadly vested in elected government. D.C. Code 1981, §§ 1-281, 3-601 et seq. District of Columbia Bd. of Elections & Ethics v. District of Columbia, 520 A.2d 671, 1986 D.C. App. LEXIS 331 (1986).

Because an initiative may establish a law, it must include a bill, and thus neither District of Columbia Board of Elections and Ethics nor court truly can determine whether initiative conforms to limitations on initiative right unless it scrutinizes very bill that would become law. (Per Ferren, J., with two Judges concurring and two Judges concurring in result.) D.C. Code 1980 Supp. §§ 1-181 to 1-187, 1-181(a). Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

Proposed initiative that, if enacted, would establish that 'only a marriage between a man and a woman [would be] valid or recognized in the District of Columbia' would violate Human Rights Act, which prohibited certain acts for discriminatory reason based on a person's actual or perceived sexual orientation or gender identity, and, accordingly, the District of Columbia Board of Elections and Ethics could reject initiative under provision of Initiative, Referendum and Recall Procedures Act (IPA) that allowed board to reject proposed initiative if measure would authorize or would have effect of authorizing discrimination prohibited under Human Rights Act; under law already in effect, same-sex persons in District of Columbia who were validly married in other states were considered to be validly married in District of Columbia, and initiative, if enacted, would deprive only same-sex persons of legal status, rights, and privileges that they enjoyed as married persons. Jackson et al. v. D.C. Board of Elections and Ethics, 138 WLR 173 (Super. Ct. 2010).

Proposed initiative that, if enacted, would establish that 'only a marriage between a man and a woman [would be] valid or recognized in the District of Columbia' would violate Human Rights Act, which prohibited certain acts for a discriminatory reason based on a person's actual or perceived sexual orientation or gender

identity, and, accordingly, District of Columbia Board of Elections and Ethics could reject initiative because measure would violate existing District of Columbia law. *Jackson et al. v. D.C. Board of Elections and Ethics*, 138 WLR 173 (Super. Ct. 2010).

authority to repeal, or to amend in more than technical fashion, laws adopted through initiative process. D.C. Code 1981, §§ 1-204, 1-227(a), 1-281 et seq., 1-285. *Atchison v. District of Columbia*, 585 A.2d 150, 1991 D.C. App. LEXIS 3 (1991).

Powers of council.

The Council of the District of Columbia has

§ 1-204.102. Process.

(a) An initiative or referendum may be proposed by the presentation of a petition to the District of Columbia Board of Elections and Ethics containing the signatures of registered qualified electors equal in number to 5 percent of the registered electors in the District of Columbia: Provided, that the total signatures submitted include 5 percent of the registered electors in each of 5 or more of the City's wards. The number of registered electors which is used for computing these requirements shall be according to the latest official count of registered electors by the Board of Elections and Ethics which was issued 30 or more days prior to submission of the signatures for the particular initiative or referendum petition.

(b)(1) Upon the presentation of a petition for a referendum to the District of Columbia Board of Elections and Ethics as provided in this section, the District of Columbia Board of Elections and Ethics shall notify the appropriate custodian of the act of the Council of the District of Columbia (either the President of the United States or the President of the Senate and the Speaker of the House of Representatives) as provided in §§ 1-204.04 and 1-204.46 and the President of the United States or the President of the Senate and the Speaker of the House of Representatives shall, as is appropriate, return such act or portion of such act to the Chairman of the Council of the District of Columbia. No further action may be taken upon such act or portion of such act until after a referendum election is held.

(2) No act is subject to referendum if it has become law according to the provisions of § 1-204.04.

(Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199; June 7, 1979, D.C. Law 3-1, § 5, 25 DCR 9454.)

Section references. — This section is referred to in §§ 1-204.103 and 1-204.112.

Prior Codifications. — 1981 Ed., § 1-282. 1973 Ed., § 1-182.

Legislative history of Law 2-46. — For legislative history of D.C. Law 2-46, see Historical and Statutory Notes following § 1-204.101.

Legislative history of Law 3-1. — Law 3-1

was introduced in Council and assigned Bill No. 3-2, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on March 13, 1979 and March 27, 1979, respectively. Signed by the Mayor on April 10, 1979, it was assigned Act No. 3-18 and transmitted to both Houses of Congress for its review.

CASE NOTES

ANALYSIS

Administrative matters.
Congressional review.

Laws appropriating funds.
Limitations on right.
Material changes.
Validity.

Administrative matters.

Proposed District of Columbia initiative, substantive effect of which would be to amend general capital construction statute removing authorization for convention center and also to repeal law providing for its operation did not address merely administrative concerns or impermissibly interfere with execution of existing law and thus was "legislative" in both its substantive and final aspects and did not violate rule that initiative cannot extend to administrative matters. (Per Ferren, J., with two Judges concurring and two Judges concurring in result.) D.C. Code 1973, § 9-220(a); D.C. Code 1980 Supp. § 1-181(b). *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

Congressional review.

Supreme Court was unlikely to grant certiorari in case in which District of Columbia voters had sought from District of Columbia Board of Elections and from the District's courts a public referendum before the District's Religious Freedom and Civil Marriage Equality Amendment Act of 2009, which would expand the definition of marriage in the District to include same-sex couples, went into effect, and thus, a Circuit Justice would deny voters' application for a stay that would prevent the Act from going into effect; Supreme Court's policy was to defer to decisions of courts of District of Columbia on matters of exclusively local concern, Congress could have prevented the Act from going into effect through a joint resolution of disapproval but had not done so, and, while voters' challenge to the Act by way of referendum would apparently become moot when the Act went into effect, voters were also pursuing a ballot initiative that would provide an opportunity for repeal of the Act, and their request for an initiative would not become moot when the Act went into effect. (Per Chief Justice Roberts, as Circuit Justice.) *Jackson v. D.C. Bd. of Elections & Ethics*, 130 S. Ct. 1279, 176 L. Ed. 2d 102, 2010 U.S. LEXIS 2204 (2010).

Where referendum was passed that preserved District of Columbia's Assault Weapon Manufacturing Strict Liability Act and rejected legislation repealing Liability Act, new 30-day period for congressional review of Liability Act began on day after result of referendum was announced; with that announcement, Congress was on notice that, absent congressional resolution of disapproval, Liability Act would take effect by operation of law on expiration of legislation temporarily repealing Liability Act. D.C. Code 1981, § 1-233(c)(1). *Bliley v. Kelly*, 23 F.3d 507, 1994 U.S. App. LEXIS 11716 (C.A.D.C. 1994).

Counsel of District of Columbia's enactment of legislation temporarily repealing Assault

Weapon Manufacturing Strict Liability Act resulted in suspension of Congress' review period under Home Rule Act pending final action on Liability Act by District of Columbia; enactment of Emergency and Temporary Repealers relieved Congress of need to review legislation that Council itself was in process of repealing. D.C. Code 1981, § 1-233(c)(1). *Bliley v. Kelly*, 23 F.3d 507, 1994 U.S. App. LEXIS 11716 (C.A.D.C. 1994).

Once act adopted by the District of Columbia Council has been transmitted to Congress, legislative process of the District insofar as the Council and mayor are concerned is at an end, and the only circumstances that can prevent the act from becoming law are the passage of a joint resolution by Congress or the filing of a valid referendum petition. D.C. Code 1981, §§ 1-229(a), 1-233(c)(1), 1-282(b)(1). *Atkinson v. District of Columbia Bd. of Elections & Ethics*, 597 A.2d 863, 1991 D.C. App. LEXIS 279 (1991).

Laws appropriating funds.

Exception to District of Columbia initiative right for "laws appropriating funds" bars any initiative that would halt a project to the extent funds have been requested or appropriated, but leaves within scope of initiative right the power to stop project as of end of fiscal period for which funds have been requested or appropriated, and thus "laws appropriating funds" exception prevents electorate from using initiative to adopt budget request act or make some other affirmative effort to appropriate or to block expenditure of appropriated funds. (Per Ferren, J., with two Judges concurring and two Judges concurring in result.) D.C. Code 1980 Supp. §§ 1-181(a), 1-1116(k)(7). *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

Exception to District of Columbia initiative right for "laws appropriating funds" does not preclude initiatives that establish substantive authorization for new project, that repeal existing substantive authorization for program without rescinding its current funding, or that prohibit future budget requests. (Per Ferren, J., with two Judges concurring and two Judges concurring in result.) D.C. Code 1980 Supp. §§ 1-181(a), 1-1116(k)(7). *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

Exception to District of Columbia initiative right for "laws appropriating funds" constitutes operative, substantive limitation on initiative right. (Per Ferren, J., with two Judges concurring and two Judges concurring in result.) D.C. Code 1980 Supp. §§ 1-181(a), 1-1116(k)(7). *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*,

441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

Amendment which barred any initiative that would negate or limit a budget request act of District of Columbia Council properly specified limitations that charter amendments placed on initiative right and thus limitations specified by amendment were congruent, with respect to initiatives that contravene existing budget request acts with those inherent in underlying "laws appropriating funds" exception to initiative right. (Per Ferren, J., with two Judges concurring and two Judges concurring in result.) D.C. Code 1980 Supp. §§ 1-181(a), 1-1116(k)(7), (l). *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

Proposed initiative, which sought to bar construction and operation of District of Columbia convention center by repealing underlying substantive authorization for construction and operation of center and by barring further expenditure of appropriated funds and preventing future appropriation requests, would interdict expenditure of currently appropriated funds and thus was barred by exception to initiative right for "laws appropriating funds" as reflected in amendment prohibiting initiatives that contravene existing budget request act. (Per Ferren, J., with two Judges concurring and two Judges concurring in result.) D.C. Code 1980 Supp. §§ 1-181(a), 1-1116(k)(7), (l). *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

Limitations on right.

Because an initiative may establish a law, it must include a bill, and thus neither District of Columbia Board of Elections and Ethics nor court truly can determine whether initiative conforms to limitations on initiative right unless it scrutinizes very bill that would become law. (Per Ferren, J., with two Judges concurring and two Judges concurring in result.) D.C.

Code 1980 Supp. §§ 1-181 to 1-187, 1-181(a). *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

Material changes.

Initiative, as circulated on petitions, cannot lawfully be changed in any material respect for submission to District of Columbia voters, and thus attempt to submit initiative measure construed to prohibit only future budget requests for convention center, when initiative on its face purported to prohibit expenditure of appropriated funds as well as future budget requests, as well as initiative measure which constituted impermissible, substantive revision of original bill as summarized on petitions were correctly rejected. (Per Ferren, J., with two Judges concurring and two Judges concurring in result.) D.C. Code 1980 Supp. §§ 1-182, 1-183, 1-1116(i, k). *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

Validity.

Although provision of District of Columbia Charter Amendments Act creating initiative right and signed by mayor was ambiguous on its face as to signatory requirement of "five (5) percent of the registered electors in five (5) or more of the City's wards," legislative history revealed clear legislative intent to mean "in each of" five or more wards, and legislation signed by mayor was thus valid. D.C. Code 1981, § 1-282(a). *Stevenson v. District of Columbia Bd. of Elections & Ethics*, 683 A.2d 1371, 1996 D.C. App. LEXIS 201 (1996).

Provision of Initiative, Referendum, and Recall Procedures Act (IPA) on signatures for initiative or referendum petition is invalid to extent that it conflicts with Charter Amendments. D.C. Code 1981, §§ 1-282(a), 1-1320(i). *Price v. District of Columbia Bd. of Elections & Ethics*, 645 A.2d 594, 1994 D.C. App. LEXIS 121 (1994).

§ 1-204.103. Submission of measure at election.

The District of Columbia Board of Elections and Ethics shall submit an initiative measure without alteration at the next general, special, or primary election held at least 90 days after the measure is received. The District of Columbia Board of Elections and Ethics shall hold an election on a referendum measure within 114 days of its receipt of a petition as provided in § 1-204.102. If a previously scheduled general, primary, or special election will occur between 54 and 114 days of its receipt of a petition as provided in § 1-204.102, the District of Columbia Board of Elections and Ethics may present the referendum at that election.

(Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199.)

Prior Codifications. — 1981 Ed., § 1-283. 1973 Ed., § 1-183.

Legislative history of Law 2-46. — For

legislative history of D.C. Law 2-46, see Historical and Statutory Notes following § 1-204.101.

CASE NOTES

ANALYSIS

Authority of board.

Material changes.

Authority of board.

District Council was not obliged to allow initiatives that would have had the effect of authorizing discrimination prohibited by the Human Rights Act to be put to voters, and then to repeal them, or to wait for them to be challenged as having been improper subjects of initiative, should they be approved by voters; rather, the Council was authorized under the Home Rule Act to legislate, as it did through the Initiative Procedures Act (IPA), that the Board of Elections and Ethics must refuse to accept initiatives and referenda that would authorize prohibited discrimination. *Jackson v. D.C. Bd. of Elections & Ethics*, 999 A.2d 89, 2010 D.C. App. LEXIS 400 (2010), writ of certiorari denied by 131 S. Ct. 1001, 178 L. Ed.

2d 827, 2011 U.S. LEXIS 730, 79 U.S.L.W. 3419 (U.S. 2011).

Material changes.

Initiative, as circulated on petitions, cannot lawfully be changed in any material respect for submission to District of Columbia voters, and thus attempt to submit initiative measure construed to prohibit only future budget requests for convention center, when initiative on its face purported to prohibit expenditure of appropriated funds as well as future budget requests, as well as initiative measure which constituted impermissible, substantive revision of original bill as summarized on petitions were correctly rejected. (Per Ferren, J., with two Judges concurring and two Judges concurring in result.) D.C. Code 1980 Supp. §§ 1-182, 1-183, 1-1116(i, k). *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

§ 1-204.104. Rejection of measure.

If a majority of the registered qualified electors voting on a referred act vote to disapprove the act, such action shall be deemed a rejection of the act or that portion of the act on the referendum ballot and no action may be taken by the Council of the District of Columbia with regard to the matter presented at referendum for the 365 days following the date of the District of Columbia Board of Elections and Ethics' certification of the vote concerning the referendum.

(Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199.)

Prior Codifications. — 1981 Ed., § 1-284. 1973 Ed., § 1-184.

Legislative history of Law 2-46. — For legislative history of D.C. Law 2-46, see Historical and Statutory Notes following § 1-204.101.

Editor's notes. — Rejection of Initiative on Mandatory Life Imprisonment or Death Penalty for Murder in the District of Columbia: Section 138 of Pub. L. 102-382, 106 Stat. 1436,

the District of Columbia Appropriations Act, 1993, provided an initiative measure which would have increased the penalty for first-degree murder in the District of Columbia to a sentence of death or life imprisonment without the possibility of parole; the initiative was rejected at the general election held on November 3, 1992.

§ 1-204.105. Approval of measure.

If a majority of the registered qualified electors voting in a referendum approve an act or adopt legislation by initiative, then the adopted initiative or the act approved by referendum shall be an act of the Council upon the certification of the vote on such initiative or act by the District of Columbia

Board of Elections and Ethics, and such act shall become law subject to the provisions of § 1-206.02(c).

(Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199; Oct. 27, 1978, 92 Stat. 2023, Pub. L. 95-526.)

Prior Codifications. — 1981 Ed., § 1-285.
1973 Ed., § 1-185.

Legislative history of Law 2-46. — For

legislative history of D.C. Law 2-46, see Historical and Statutory Notes following § 1-204.101.

CASE NOTES

ANALYSIS

Certification.

Laws appropriating funds.

Repeals or amendments.

Right of initiative, generally.

Certification.

Phrase “conduct any ballot initiative” in the Barr Amendment, which precluded use of funds appropriated for the District of Columbia in 1998 to conduct election day activities related to referendum on medical marijuana initiative, did not prevent the District of Columbia board of elections and ethics from counting, releasing, and certifying the vote on the initiative; if Barr Amendment precluded counting, releasing, and certifying the results of votes properly cast in a proper referendum, it would burden core political speech and would not be sufficiently narrowly tailored to meet the government’s interest in criminalizing drug possession or use. U.S. Const. Amend. 1; Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, § 171, 112 Stat. 2681. *Turner v. District of Columbia Bd. of Elections & Ethics*, 77 F.Supp.2d 25, 1999 U.S. Dist. LEXIS 16595 (1999).

Laws appropriating funds.

Limitation in District of Columbia initiative statute prohibiting electors from proposing laws appropriating funds applies to more than Budget Request Act; language of limitation must refer to council’s role in District government’s budget process. D.C. Code 1981, §§ 1-227(e, f), 1-229(a), 1-233(c), 1-281(a), 1-285, 47-304, 47-313(a). *Hessey v. District of Colum-*

bia Bd. of Elections & Ethics, 601 A.2d 3, 1991 D.C. App. LEXIS 318 (1991).

Repeals or amendments.

The Council of the District of Columbia has authority to repeal, or to amend in more than technical fashion, laws adopted through initiative process. D.C. Code 1981, §§ 1-204, 1-227(a), 1-281 et seq., 1-285. *Atchison v. District of Columbia*, 585 A.2d 150, 1991 D.C. App. LEXIS 3 (1991).

Right of initiative, generally.

Proposed initiative, which sought to bar construction and operation of convention center, and which represented effort through both substantive and fiscal means to reverse legislative policy determination that District of Columbia should build and operate convention center, proposed a “law” within meaning of District of Columbia charter amendments relating to initiative proposals. D.C. Code 1980 Supp. § 1-181(a). *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

Because an initiative may establish a law, it must include a bill, and thus neither District of Columbia Board of Elections and Ethics nor court truly can determine whether initiative conforms to limitations on initiative right unless it scrutinizes very bill that would become law. (Per Ferren, J., with two Judges concurring and two Judges concurring in result.) D.C. Code 1980 Supp. §§ 1-181 to 1-187, 1-181(a). *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

§ 1-204.106. Short title and summary.

The District of Columbia Board of Elections and Ethics shall be empowered to propose a short title and summary of the initiative and referendum matter which accurately reflects the intent and meaning of the proposed referendum or initiative. Any citizen may petition the Superior Court of the District of Columbia no later than 30 days prior to the election at which the initiative or referendum will be held for a writ in the nature of mandamus to correct any

inaccurate short title and summary by the District of Columbia Board of Elections and Ethics and to mandate that Board to properly state the summary of the initiative or referendum measure.

(Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199; Oct. 27, 1978, 92 Stat. 2023, Pub. L. 95-526.)

Prior Codifications. — 1981 Ed., § 1-286.
1973 Ed., § 1-186.

legislative history of D.C. Law 2-46, see Historical and Statutory Notes following § 1-204.101.

Legislative history of Law 2-46. — For

CASE NOTES

Challenges.

Proposers of bottle deposit and refund initiative were not entitled to collect attorney fees and costs from either board of elections and ethics or from party challenging board's summary statement and short title of proposed

initiative, for intervening on behalf of board in challenge action, since statute only authorized such fees for proposers that challenged board's action on initiative. D.C. Code 1981, § 1-1320(e)(3). *Johnson v. Danneman*, 547 A.2d 981, 1988 D.C. App. LEXIS 167 (1988).

§ 1-204.107. Adoption of acts to carry out subpart.

The Council of the District of Columbia shall adopt such acts as are necessary to carry out the purpose of this subpart within 180 days of the effective date of this subpart. Neither a petition initiating an initiative nor a referendum may be presented to the District of Columbia Board of Elections and Ethics prior to October 1, 1978.

(Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199; Oct. 27, 1978, 92 Stat. 2023, Pub. L. 95-526.)

Prior Codifications. — 1981 Ed., § 1-287.
1973 Ed., § 1-187.

legislative history of D.C. Law 2-46, see Historical and Statutory Notes following § 1-204.101.

Legislative history of Law 2-46. — For

CASE NOTES

ANALYSIS

Charter amendments, generally.
Council legislative powers, generally.
Laws appropriating funds.

cerning enabling legislation for initiative, referendum and recall. *Convention Center Referendum Committee v. Board of Elections & Ethics*, 399 A.2d 550, 1979 D.C. App. LEXIS 318 (1979).

Charter amendments, generally.

Charter Amendments control over inconsistent provision of Initiative, Referendum, and Recall Procedures Act (IPA). D.C. Code 1981, §§ 1-281 to 1-287, 1-291 to 1-295, 1-1320 to 1-1326. *Price v. District of Columbia Bd. of Elections & Ethics*, 645 A.2d 594, 1994 D.C. App. LEXIS 121 (1994).

If directed to legislature, provision was not self-executing, as its primary function was to require legislature to make further law; thus, local charter amendments governing initiative, referendum and recall were not self-executing inasmuch as provision of such amendments spoke in mandatory terms to city council con-

Council legislative powers, generally.

Human Rights Act safeguards imposed by District Council on Board of Elections and Ethics, which required Board to refuse to accept any proposed initiative that would authorize, or have the effect of authorizing, discrimination prohibited by the Human Rights Act, were not inconsistent with the intent of the Initiative, Referendum, and Recall Charter Amendment Act (CAA) that gave citizens the right of initiative; the CAA was ambiguous as to whether there were other limitations on the right to initiative outside of exception for laws appropriating funds, and the CAA gave Council the authority to adopt acts as were necessary to

carry out the purpose of the CAA. *Jackson v. D.C. Bd. of Elections & Ethics*, 999 A.2d 89, 2010 D.C. App. LEXIS 400 (2010), writ of certiorari denied by 131 S. Ct. 1001, 178 L. Ed. 2d 827, 2011 U.S. LEXIS 730, 79 U.S.L.W. 3419 (U.S. 2011).

Power of purse which Congress delegated to District of Columbia government in Self-Government and Governmental Reorganization Act remains with elected officials of District government and is not subject to control by electorate through initiative. D.C. Code 1981, §§ 1-203, 1-287, 1-1320, 1-1320(b)(1), (b)(1)(D); D.C. Code 1973 Supp., Tit. VII, § 1-184. *Hessey v. District of Columbia Bd. of Elections & Ethics*, 601 A.2d 3, 1991 D.C. App. LEXIS 318 (1991).

District of Columbia Council, pursuant to its powers of ordinary legislation, can remove substantive authorization for funded project but, to extent Congress has appropriated funds for project, council can halt further expenditure only through more elaborate requirements of budget process, even though project has been formally deauthorized, and thus substantial deauthorization by council can halt funded project during current fiscal year only if implemented by supplemental budget request act followed by congressional supplemental appropriations act. (Per Ferren, J., with two Judges concurring and two Judges concurring in result.) Budget and Accounting Act, 1921, § 201(a)(b), 31 U.S.C. § 11(b); D.C. Code 1978

Supp. §§ 47-221(c), 47-224. *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

Laws appropriating funds.

Exception to District of Columbia initiative right for “laws appropriating funds” constitutes operative, substantive limitation on initiative right. (Per Ferren, J., with two Judges concurring and two Judges concurring in result.) D.C. Code 1980 Supp. §§ 1-181(a), 1-1116(k)(7). *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

Amendment which barred any initiative that would negate or limit a budget request act of District of Columbia Council properly specified limitations that charter amendments placed on initiative right and thus limitations specified by amendment were congruent, with respect to initiatives that contravene existing budget request acts with those inherent in underlying “laws appropriating funds” exception to initiative right. (Per Ferren, J., with two Judges concurring and two Judges concurring in result.) D.C. Code 1980 Supp. §§ 1-181(a), 1-1116(k)(7), (l). *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

Subpart 2—Recall of Elected Officials.

§ 1-204.111. “Recall” defined.

The term “recall” means the process by which the qualified electors of the District of Columbia may call for the holding of an election to remove or retain an elected official of the District of Columbia (except the Delegate to Congress for the District of Columbia) prior to the expiration of his or her term.

(Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199.)

Cross references. — Elections, recall of elected officials, see § 1-1001.17.

Prior Codifications. — 1981 Ed., § 1-291. 1973 Ed., § 1-191.

Legislative history of Law 2-46. — For legislative history of D.C. Law 2-46, see Historical and Statutory Notes following § 1-204.101.

CASE NOTES

Inconsistent provisions.

Charter Amendments control over inconsistent provision of Initiative, Referendum, and Recall Procedures Act (IPA). D.C. Code 1981,

§§ 1-281 to 1-287, 1-291 to 1-295, 1-1320 to 1-1326. *Price v. District of Columbia Bd. of Elections & Ethics*, 645 A.2d 594, 1994 D.C. App. LEXIS 121 (1994).

§ 1-204.112. Process.

Any elected officer of the District of Columbia government (except the

Delegate to Congress for the District of Columbia) may be recalled by the registered electors of the election ward from which he or she was elected or by the registered electors of the District of Columbia at large in the case of an at-large elected officer, whenever a petition demanding his or her recall, signed by 10 percent of the registered electors thereof, is filed with the District of Columbia Board of Elections and Ethics. The 10 percent shall be computed from the total number of the registered electors from the ward, according to the latest official count of registered electors by the Board of Elections and Ethics which was issued 30 or more days prior to submission of the signatures for the particular recall petition. In the case of an at-large elected official, the 10 percent shall include 10 percent of the registered electors in each of 5 or more of the City's wards. The District of Columbia Board of Elections and Ethics shall hold an election within 114 days of its receipt of a petition as provided in § 1-204.102. If a previously scheduled general, primary, or special election will occur between 54 and 114 days of its receipt of a petition as provided in § 1-204.102, then the District of Columbia Board of Elections and Ethics may present the recall question at that election.

(Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199; June 7, 1979, D.C. Law 3-1, § 5, 25 DCR 9454.)

Prior Codifications. — 1981 Ed., § 1-292. 1973 Ed., § 1-192.

Legislative history of Law 2-46. — For legislative history of D.C. Law 2-46, see Historical and Statutory Notes following § 1-204.101.

Legislative history of Law 3-1. — For legislative history of D.C. Law 3-1, see Historical and Statutory Notes following § 1-204.102.

§ 1-204.113. Time limits on initiation of process.

The process of recalling an elected official may not be initiated within the first 365 days nor the last 365 days of his or her term of office. Nor may the process be initiated within 1 year after a recall election has been determined in his or her favor.

(Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199.)

Prior Codifications. — 1981 Ed., § 1-293. 1973 Ed., § 1-193.

Legislative history of Law 2-46. — For

legislative history of D.C. Law 2-46, see Historical and Statutory Notes following § 1-204.101.

§ 1-204.114. When official removed; filling of vacancies.

An elected official is removed from office if a majority of the qualified electors voting in the election vote to remove him or her. The vacancy created by such recall shall be filled in the same manner as other vacancies as provided in §§ 1-204.01(d) and 1-204.21(c)(2) and § 1-1001.10(a).

(Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199.)

Prior Codifications. — 1981 Ed., § 1-294.
1973 Ed., § 1-194.

legislative history of D.C. Law 2-46, see Historical and Statutory Notes following § 1-204.101.

Legislative history of Law 2-46. — For

§ 1-204.115. Adoption of acts to carry out subpart.

The Council of the District of Columbia shall adopt such acts as are necessary to carry out the purpose of this subpart within 180 days of October 27, 1978. No petition for recall may be presented to the District of Columbia Board of Elections and Ethics prior to October 1, 1978.

(Mar. 10, 1978, D.C. Law 2-46, § 2, 24 DCR 199.)

Cross references. — Elections, recall of elected officials, see § 1-1001.17.

Prior Codifications. — 1981 Ed., § 1-295.
1973 Ed., § 1-195.

Legislative history of Law 2-46. — For legislative history of D.C. Law 2-46, see Historical and Statutory Notes following § 1-204.101.

CASE NOTES

Inconsistent provisions.

Charter Amendments control over inconsistent provision of Initiative, Referendum, and Recall Procedures Act (IPA). D.C. Code 1981,

§§ 1-281 to 1-287, 1-291 to 1-295, 1-1320 to 1-1326. *Price v. District of Columbia Bd. of Elections & Ethics*, 645 A.2d 594, 1994 D.C. App. LEXIS 121 (1994).

Subchapter V. Federal Payment.

§ 1-205.01. Duties of the Mayor, Council, and Federal Office of Management and Budget. [Repealed].

Repealed.

(Dec. 24, 1973, 87 Stat. 812, Pub. L. 93-198, title V, § 501; Aug. 5, 1997, 111 Stat. 777, Pub. L. 105-33, § 11601(a)(1).)

§ 1-205.02. Authorization of appropriations. [Repealed].

Repealed.

(Dec. 24, 1973, 87 Stat. 813, Pub. L. 93-198, title V, § 502; Aug. 29, 1994, 88 Stat. 793, Pub. L. 93-395, § 1(7); Aug. 6, 1981, 95 Stat. 150, Pub. L. 97-30; Oct. 15, 1982, 96 Stat. 1626, Pub. L. 97-34; Aug. 2, 1983, 97 Stat. 367, Pub. L. 98-65; June 12, 1984, 98 Stat. 242, Pub. L. 98-316; Nov. 8, 1984, 98 Stat. 3369, Pub. L. 98-621, § 9(c)(2); Dec. 12, 1989, 103 Stat. 1901, Pub. L. 101-223, § 2(a); Aug. 17, 1991, 105 Stat. 495, Pub. L. 102-102, § 2(a); Aug. 5, 1997, 111 Stat. 777, Pub. L. 105-33, § 11601(a)(1).)

§ 1-205.03. Federal payment formula [Repealed].

Repealed.

(Dec. 24, 1973, 87 Stat. 813, Pub. L. 93-198, title V, § 503, as added Aug. 17, 1991, 105 Stat. 495, Pub. L. 102-102, § 2(b); Oct. 19, 1994, 108 Stat. 3488, Pub.

L. 103-373, § 2; Apr. 17, 1995, 109 Stat. 142, Pub. L. 104-8, § 301(e); Aug. 5, 1997, 111 Stat. 777, Pub. L. 105-33, § 11601(a)(1).)

Subchapter VI. Reservation of Congressional Authority.

§ 1-206.01. Retention of constitutional authority.

Notwithstanding any other provision of this chapter, the Congress of the United States reserves the right, at any time, to exercise its constitutional authority as legislature for the District, by enacting legislation for the District on any subject, whether within or without the scope of legislative power granted to the Council by this chapter, including legislation to amend or repeal any law in force in the District prior to or after enactment of this chapter and any act passed by the Council.

(Dec. 24, 1973, 87 Stat. 813, Pub. L. 93-198, title VI, § 601.)

Cross references. — Budget and financial management, borrowing and spending limitations, see § 1-206.03.

Section references. — This section is re-

ferred to in §§ 1-203.02, 1-203.03, and 1-204.04.

Prior Codifications. — 1981 Ed., § 1-206. 1973 Ed., § 1-126.

CASE NOTES

ANALYSIS

Congressional review.
Contract clause.
Council members' right to vote.
Delegation of authority.
Disapproval.
Distribution of powers.
Independent agencies.
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Local authority, generally.
Nature of authority.
Oversight.
Schools.
Worker's compensation.

Congressional review.

District court which dismissed suit, did not abuse its discretion by hearing Congressmen's action seeking declaratory judgment requiring District of Columbia Council to resubmit Assault Weapon Manufacturing Strict Liability Act to Congress for review pursuant to Home Rule Act; although it was argued that Congressmen could seek relief simply by introducing legislation to repeal Liability Act, relief sought by Congressmen was to review Liability Act before it became law, rather than repeal of Liability Act. D.C. Code 1981, § 1-233(c)(1). *Bliley v. Kelly*, 23 F.3d 507, 1994 U.S. App. LEXIS 11716 (C.A.D.C. 1994).

Congressmen stated cause of action under § 1983 in their action seeking declaratory judgment requiring Counsel of District of Columbia

to resubmit District of Columbia's Assault Weapon Manufacturing Strict Liability Act to Congress for review pursuant to Home Rule Act; statutory scheme confers right of participation on Congress that is not beyond competence of judicial right to enforce. 42 U.S.C. § 1983; D.C. Code 1981, § 1-233(c)(1). *Bliley v. Kelly*, 23 F.3d 507, 1994 U.S. App. LEXIS 11716 (C.A.D.C. 1994).

Counsel of District of Columbia's enactment of legislation temporarily repealing Assault Weapon Manufacturing Strict Liability Act resulted in suspension of Congress' review period under Home Rule Act pending final action on Liability Act by District of Columbia; enactment of Emergency and Temporary Repealers relieved Congress of need to review legislation that Council itself was in process of repealing. D.C. Code 1981, § 1-233(c)(1). *Bliley v. Kelly*, 23 F.3d 507, 1994 U.S. App. LEXIS 11716 (C.A.D.C. 1994).

Passage by the District of Columbia Council of temporary, emergency, and full repeals of previously adopted Act which had been sent to Congress for consideration did not affect the process of congressional layover for the original Act. D.C. Code 1981, § 1-233(c)(1). *Atkinson v. District of Columbia Bd. of Elections & Ethics*, 597 A.2d 863, 1991 D.C. App. LEXIS 279 (1991).

Contract clause.

Even if District of Columbia were to violate statutory provision requiring it to abide by

contract clause, Congress could step in and pass same legislation so that statute would be imposed on District that would violate contract clause if enacted by state. U.S. Const. Art. 1, § 10, cl. 1; D.C. Code 1981, §§ 1-204, 1-206. *District of Columbia v. American Fed'n of Gov't Employees*, 619 A.2d 77, 1993 D.C. App. LEXIS 13 (1993), writ of certiorari denied by 510 U.S. 933, 114 S. Ct. 347, 126 L. Ed. 2d 312, 1993 U.S. LEXIS 6594, 62 U.S.L.W. 3288, 144 L.R.R.M. (BNA) 2520 (1993).

Furlough days and provisions barring within-grade pay increases and accrual of time in grade for union workers employed by District of Columbia became operative through appropriations legislation enacted exclusively by Congress and, thus, legislation was not subject to contract clause review for allegedly violating collective bargaining agreements, even if District of Columbia had violated statutory contract clause limitations by including provisions in District's Budget Request Act that had been basis for congressional appropriations legislation. *District of Columbia Appropriations Act, 1993*, *District of Columbia Supplemental Appropriations and Rescissions Act, 1992*, 106 Stat. 1422; U.S. Const. Art. 1, § 10, cl. 1; D.C. Code 1981, §§ 1-204, 1-206. *District of Columbia v. American Fed'n of Gov't Employees*, 619 A.2d 77, 1993 D.C. App. LEXIS 13 (1993), writ of certiorari denied by 510 U.S. 933, 114 S. Ct. 347, 126 L. Ed. 2d 312, 1993 U.S. LEXIS 6594, 62 U.S.L.W. 3288, 144 L.R.R.M. (BNA) 2520 (1993).

Congress did not clearly convey intent to impose statutory contract clause limitations on appropriations legislation for District of Columbia that unions claimed violated contract clause by impairing obligations under existing collective bargaining agreements, despite language in legislative history of appropriations legislation that merely expressed congressional hope that issue could be decided at local level by District citizens and their government. U.S. Const. Art. 1, § 10, cl. 1; D.C. Code 1981, §§ 1-204, 1-206. *District of Columbia v. American Fed'n of Gov't Employees*, 619 A.2d 77, 1993 D.C. App. LEXIS 13 (1993), writ of certiorari denied by 510 U.S. 933, 114 S. Ct. 347, 126 L. Ed. 2d 312, 1993 U.S. LEXIS 6594, 62 U.S.L.W. 3288, 144 L.R.R.M. (BNA) 2520 (1993).

Council members' right to vote.

Right to vote freely on issues as they arise falls within broad First Amendment protections afforded members of District of Columbia council as legislators; votes of council members qualify as speech. U.S. Const. Art. 1, § 8, cl. 1; Amend. 1; *District of Columbia Self-Government and Governmental Reorganization Act*, §§ 102(a), 401(a), 421(a), 87 Stat. 774. *Clarke v. United States*, 886 F.2d 404, 1989 U.S. App. D.C. 256, 1990 U.S. App. LEXIS 17264 (1990).

LEXIS 14431 (C.A.D.C. 1989), vacated en banc by, remanded by 915 F.2d 699, 286 U.S. App. D.C. 256, 1990 U.S. App. LEXIS 17264 (1990).

Congressional amendment that made expenditure funds appropriated for District of Columbia contingent upon District of Columbia council's enactment of legislation authorizing religiously affiliated educational institutions to deny benefits or endorsements on basis of sexual preference violated council members' free speech rights; requirement that specified legislation be passed to obtain appropriations did not advance either compelling or substantial interest and was not narrowly drawn or designed to abridge only that speech essential to furthering interests under traditional First Amendment analysis, nor could legislation pass muster under Pickering standard for evaluating restrictions on speech of governmental employees, assuming that standard was applicable. U.S.C. Const. Art. 1, § 8, cl. 1; Amend. 1; *District of Columbia Self-Government and Governmental Reorganization Act*, §§ 102(a), 401(a), 421(a), 87 Stat. 774; *District of Columbia Appropriations Act, 1989*, § 145, 102 Stat. 2269-14. *Clarke v. United States*, 886 F.2d 404, 1989 U.S. App. LEXIS 14431 (C.A.D.C. 1989), vacated en banc by, remanded by 915 F.2d 699, 286 U.S. App. D.C. 256, 1990 U.S. App. LEXIS 17264 (1990).

Members of District of Columbia council are legislators under Home Rule Act and, as such, they enjoy broad First Amendment protections in discharging their responsibilities. U.S.C. Const. Art. 1, § 8, cl. 1; Amend. 1; *District of Columbia Self-Government and Governmental Reorganization Act*, §§ 102(a), 401(a), 421(a), 87 Stat. 774. *Clarke v. United States*, 886 F.2d 404, 1989 U.S. App. LEXIS 14431 (C.A.D.C. 1989), vacated en banc by, remanded by 915 F.2d 699, 286 U.S. App. D.C. 256, 1990 U.S. App. LEXIS 17264 (1990).

Members of District of Columbia city council had constitutionally protected right to cast unimpeded votes on matters of public importance and thus could not be enjoined from introducing bills that would have abolished District Lottery & Charitable Games Control Board. *Brewer v. D.C. Fin. Responsibility & Mgmt. Assistance Auth.*, 953 F. Supp. 406, 1997 U.S. Dist. LEXIS 892 (1997), affirmed without opinion by 132 F.3d 1480, 328 U.S. App. D.C. 134, 1997 U.S. App. LEXIS 40261 (1997).

District of Columbia council members had First Amendment right to vote as they pleased, notwithstanding Congress' constitutional authority to legislate for District pursuant to seat of government clause and Home Rule Act, for purposes of challenge to constitutionality of congressional act depriving District of appropriations if specified legislation were not adopted to authorize religiously affiliated educational institutions to deny benefits or

endorsement to persons condoning homosexuality. District of Columbia Appropriations Act, 1989, § 1 et seq., 102 Stat. 2269; D.C. Code 1981, § 1-206; U.S. Const. Art. 1, § 8, cl. 17; Amend. 1. *Clarke v. United States*, 705 F. Supp. 605, 1988 U.S. Dist. LEXIS 15611 (1988), affirmed by 886 F.2d 404, 280 U.S. App. D.C. 387, 1989 U.S. App. LEXIS 14431 (1989).

Delegation of authority.

Congress may delegate all or part of its plenary legislative power over District of Columbia to other bodies, and may make such allocations of power among those bodies as it deems appropriate. *Shook v. District of Columbia Fin. Responsibility & Mgmt. Assistance Auth.*, 964 F. Supp. 416, 1997 U.S. Dist. LEXIS 5929 (1997), affirmed in part and reversed in part by 132 F.3d 775, 328 U.S. App. D.C. 74, 1998 U.S. App. LEXIS 83 (1998).

Congress, by enactment of statute creating District of Columbia Financial Responsibility and Management Assistance Authority and amendments thereto, delegated its plenary power to run schools of District of Columbia to Authority; statute gave Authority broad mission to carry out statute's purposes and power to hold hearings, obtain official data, subpoena witnesses, enter into contracts and seek judicial enforcement of its authority, provided that Authority would not be subject to control, supervision, oversight, or review of mayor or city council, and gave Authority sweeping authority to issue orders, rules, and regulations that would be valid if issued by mayor or head of any department or agency of District government. District of Columbia Financial Responsibility and Management Assistance Act of 1995, § 1 et seq., 109 Stat. 97. *Shook v. District of Columbia Fin. Responsibility & Mgmt. Assistance Auth.*, 964 F. Supp. 416, 1997 U.S. Dist. LEXIS 5929 (1997), affirmed in part and reversed in part by 132 F.3d 775, 328 U.S. App. D.C. 74, 1998 U.S. App. LEXIS 83 (1998).

District of Columbia Self-Government Act did not bind Congress to contract clause for congressional legislation for District of Columbia despite delegation of legislative authority to local officials; Act expressly recognized congressional authority to exempt congressional legislation for District of Columbia from any contract clause limitation. U.S. Const. Art. 1, § 10, cl. 1; D.C. Code 1981, §§ 1-204, 1-206, 1-233, 47-313. *District of Columbia v. American Fed'n of Gov't Employees*, 619 A.2d 77, 1993 D.C. App. LEXIS 13 (1993), writ of certiorari denied by 510 U.S. 933, 114 S. Ct. 347, 126 L. Ed. 2d 312, 1993 U.S. LEXIS 6594, 62 U.S.L.W. 3288, 144 L.R.R.M. (BNA) 2520 (1993).

Disapproval.

Where referendum was passed that preserved District of Columbia's Assault Weapon

Manufacturing Strict Liability Act and rejected legislation repealing Liability Act, new 30-day period for congressional review of Liability Act began on day after result of referendum was announced; with that announcement, Congress was on notice that, absent congressional resolution of disapproval, Liability Act would take effect by operation of law on expiration of legislation temporarily repealing Liability Act. D.C. Code 1981, § 1-233(c)(1). *Bliley v. Kelly*, 23 F.3d 507, 1994 U.S. App. LEXIS 11716 (C.A.D.C. 1994).

Distribution of powers.

Congress did not infringe upon authority of Executive Branch by giving District of Columbia Financial Responsibility and Management Assistance Authority the power to order take over, replace, or eliminate District Lottery & Charitable Games Control Board. U.S. Const. Art. 1, § 8, cl. 17. *Brewer v. D.C. Fin. Responsibility & Mgmt. Assistance Auth.*, 953 F. Supp. 406, 1997 U.S. Dist. LEXIS 892 (1997), affirmed without opinion by 132 F.3d 1480, 328 U.S. App. D.C. 134, 1997 U.S. App. LEXIS 40261 (1997).

Independent agencies.

District of Columbia Board of Education was subject to statutory authority of District of Columbia Financial Responsibility and Management Assistance Authority to issue orders, rules or regulations, despite contentions that overall grant of authority in enabling statute did not extend to independent agencies such as Board and that statutory direction to Authority to preserve principle of Home Rule exempted independent agencies from Authority's reach; enabling statute gave Authority authority to take any action valid if taken by head of independent agency, statutory grant of authority employed broad and inclusive language, and exclusion of Board from Authority's authority would have made no sense in light of purposes of enabling statute and Congress' specific statement that Authority was to address problems in District of Columbia's schools. District of Columbia Financial Responsibility and Management Assistance Act of 1995, § 1 et seq., 109 Stat. 97. *Shook v. District of Columbia Fin. Responsibility & Mgmt. Assistance Auth.*, 964 F. Supp. 416, 1997 U.S. Dist. LEXIS 5929 (1997), affirmed in part and reversed in part by 132 F.3d 775, 328 U.S. App. D.C. 74, 1998 U.S. App. LEXIS 83 (1998).

Institutions of government.

Congress has discretion to create institutions of government for District of Columbia and to define their responsibilities only so long as it does not contravene any provision of Constitution. U.S. Const. Art. 1, § 8, cl. 1. *Clarke v. United States*, 886 F.2d 404, 1989 U.S. App. LEXIS 14431 (C.A.D.C. 1989), vacated en banc

by, remanded by 915 F.2d 699, 286 U.S. App. D.C. 256, 1990 U.S. App. LEXIS 17264 (1990).

Local authority, generally.

Once act adopted by the District of Columbia Council has been transmitted to Congress, legislative process of the District insofar as the Council and mayor are concerned is at an end, and the only circumstances that can prevent the act from becoming law are the passage of a joint resolution by Congress or the filing of a valid referendum petition. D.C. Code 1981, §§ 1-229(a), 1-233(c)(1), 1-282(b)(1). *Atkinson v. District of Columbia Bd. of Elections & Ethics*, 597 A.2d 863, 1991 D.C. App. LEXIS 279 (1991).

Passage by the District of Columbia Council of an emergency repealer did not permanently deprive act of legal effect. D.C. Code 1981, §§ 1-229(a), 1-233(c)(1). *Atkinson v. District of Columbia Bd. of Elections & Ethics*, 597 A.2d 863, 1991 D.C. App. LEXIS 279 (1991).

Emergency Repealer Act directed to previously adopted Act imposing strict liability on manufacturers of assault weapons did not nullify the Act, and subsequent Act repealing the Assault Weapon Manufacturing Strict Liability Act was a proper matter for referendum. D.C. Code 1981, §§ 1-229(a), 1-233(c)(1). *Atkinson v. District of Columbia Bd. of Elections & Ethics*, 597 A.2d 863, 1991 D.C. App. LEXIS 279 (1991).

Ordinance promulgated by District of Columbia Board of Commissioners was not "statute" for purposes of Freedom of Information Act exemption that shields records specifically exempted from disclosure by statute; Board did not possess authority to enact statutes. D.C. Code 1981, §§ 1-1521 et seq., 1-1524(a)(6). *Newspapers, Inc. v. Metropolitan Police Dep't*, 546 A.2d 990, 1988 D.C. App. LEXIS 148 (1988).

Unconstitutional subdivision of District of Columbia Home Rule Act, requiring both houses of Congress to approve ratified amendment to city charter by concurrent resolution within 35 days of its submission to Congress but not requiring presentment of amendment to President for signature, was severable from other subdivision of same section of Act, providing that city charter could be amended by act passed by city council and ratified by majority of registered qualified electors of District voting in referendum held for such ratification, so that mandatory minimum sentencing provision for drug dealers, enacted by citizen initiative, was valid. D.C. Code 1981, §§ 1-205(a, b), 33-541(a)(1); U.S. Const. Art. 1, § 7, cl. 3. *McClough v. United States*, 520 A.2d 285, 1987 D.C. App. LEXIS 281 (1987).

Nature of authority.

For congressional legislation concerning the District of Columbia, Congress maintains its

national stature, and its enactments are not the equivalent of state actions. *IRS v. District of Columbia (In re WPG, Inc.)*, 282 B.R. 66, 2002 U.S. Dist. LEXIS 15495 (2002).

Congress' plenary power over District of Columbia means no more than that Congress is akin to a state legislature, and not that government thereof is not legislative in character. *McClough v. United States*, 520 A.2d 285, 1987 D.C. App. LEXIS 281 (1987).

Oversight.

Congressional oversight provisions of District of Columbia Home Rule Act, requiring that both houses of Congress must approve ratified amendment to city charter by concurrent resolution within 35 days of its submission to Congress but not requiring presentment of amendment to President for signature, was unconstitutional. D.C. Code 1981, § 1-205(b); U.S. Const. Art. 1, § 7, cl. 3. *McClough v. United States*, 520 A.2d 285, 1987 D.C. App. LEXIS 281 (1987).

Schools.

In determining intent of Congress with respect to delegation of its plenary power to run schools in District of Columbia, court must look to circumstances of enactment of statute creating District of Columbia Financial Responsibility and Management Assistance Authority; congressional intent can be understood only in light of context in which Congress enacted statute and policies underlying its enactment. District of Columbia Financial Responsibility and Management Assistance Act of 1995, § 1 et seq., 109 Stat. 97. *Shook v. District of Columbia Fin. Responsibility & Mgmt. Assistance Auth.*, 964 F. Supp. 416, 1997 U.S. Dist. LEXIS 5929 (1997), affirmed in part and reversed in part by 132 F.3d 775, 328 U.S. App. D.C. 74, 1998 U.S. App. LEXIS 83 (1998).

Change in powers of District of Columbia Board of Education effected by order of District of Columbia Financial Responsibility and Management Assistance Authority pursuant to statute did not affect right of District's voters to vote in manner proscribed by Fifth Amendment; Fifth Amendment did not require that elected school board have any particular powers, especially in District of Columbia where creation of Board of Education and its manner of selection fell squarely within plenary legislative power of Congress. U.S. Const. Amend. 5; District of Columbia Financial Responsibility and Management Assistance Act of 1995, § 1 et seq., 109 Stat. 97. *Shook v. District of Columbia Fin. Responsibility & Mgmt. Assistance Auth.*, 964 F. Supp. 416, 1997 U.S. Dist. LEXIS 5929 (1997), affirmed in part and reversed in part by 132 F.3d 775, 328 U.S. App. D.C. 74, 1998 U.S. App. LEXIS 83 (1998).

Worker's compensation.

Congressional amendment to Longshore and

Harbor Workers' Compensation Act expressing its disapproval of Supreme Court decision which had found that general contractors in same position as transit authority in District of Columbia would be entitled to immunity did not apply to District of Columbia workers' compensation claim against transit authority brought under District's repealed 1928 Act, even though federal Act amended by Congress had been incorporated into repealed District Act, when congressional amendment took place after enactment of District's new law; repealed law now existed only for limited purpose of setting forth standards governing cases filed prior to new law. Longshore and Harbor Workers' Compensation Act, § 5(a), 33 U.S.C. § 905(a); D.C. Code 1981, §§ 36-301 et seq., 36-501 et seq. In re Metro Subway Acci. Referral, 630 F. Supp. 385, 1984 U.S. Dist. LEXIS

21133 (1984), affirmed by 800 F.2d 1173, 255 U.S. App. D.C. 148, 1986 U.S. App. LEXIS 29827 (1986).

District of Columbia Workers' Compensation Act of 1979 covers worker's injury or disease if employment events giving rise to injury occurred before Act took effect, but worker did not become aware of injury and its job-relatedness until after that time, unless there is no subject matter jurisdiction of claim under Act or other state law, in which event Longshore and Harbor Workers' Compensation Act, as extended by Congress to District of Columbia private sector workers, applies. D.C. Code 1981, § 36-301 et seq.; Longshore and Harbor Workers' Compensation Act, §§ 1-51, as amended, 33 U.S.C. §§ 901-950. Railco Multi-Construction Co. v. Gardner, 564 A.2d 1167, 1989 D.C. App. LEXIS 196 (1989).

§ 1-206.02. Limitations on the Council.

(a) The Council shall have no authority to pass any act contrary to the provisions of this chapter except as specifically provided in this chapter, or to:

(1) Impose any tax on property of the United States or any of the several states;

(2) Lend the public credit for support of any private undertaking;

(3) Enact any act, or enact any act to amend or repeal any Act of Congress, which concerns the functions or property of the United States or which is not restricted in its application exclusively in or to the District;

(4) Enact any act, resolution, or rule with respect to any provision of Title 11 (relating to organization and jurisdiction of the District of Columbia courts);

(5) Impose any tax on the whole or any portion of the personal income, either directly or at the source thereof, of any individual not a resident of the District (the terms "individual" and "resident" to be understood for the purposes of this paragraph as they are defined in § 47-1801.04);

(6) Enact any act, resolution, or rule which permits the building of any structure within the District of Columbia in excess of the height limitations contained in § 6-601.05, and in effect on December 24, 1973;

(7) Enact any act, resolution, or regulation with respect to the Commission on Mental Health;

(8) Enact any act or regulation relating to the United States District Court for the District of Columbia or any other court of the United States in the District other than the District courts, or relating to the duties or powers of the United States Attorney or the United States Marshal for the District of Columbia;

(9) Enact any act, resolution, or rule with respect to any provision of Title 23 (relating to criminal procedure), or with respect to any provision of any law codified in Title 22 or 24 (relating to crimes and treatment of prisoners), or with respect to any criminal offense pertaining to articles subject to regulation under Chapter 45 of Title 22 during the 48 full calendar months immediately following the day on which the members of the Council first elected pursuant to this chapter take office; or

(10) Enact any act, resolution, or rule with respect to the District of Columbia Financial Responsibility and Management Assistance Authority established under § 47-391.01(a).

(b) Nothing in this chapter shall be construed as vesting in the District government any greater authority over the National Zoological Park, the National Guard of the District of Columbia, the Washington Aqueduct, the National Capital Planning Commission, or, except as otherwise specifically provided in this chapter, over any federal agency, than was vested in the Commissioner prior to January 2, 1975.

(c)(1) Except acts of the Council which are submitted to the President in accordance with Chapter 11 of Title 31, United States Code, any act which the Council determines, according to § 1-204.12(a), should take effect immediately because of emergency circumstances, and acts proposing amendments to subchapter IV of this chapter and except as provided in § 1-204.62(c) and § 1-204.72(d)(1) the Chairman of the Council shall transmit to the Speaker of the House of Representatives, and the President of the Senate, a copy of each act passed by the Council and signed by the Mayor, or vetoed by the Mayor and repassed by two-thirds of the Council present and voting, each act passed by the Council and allowed to become effective by the Mayor without his signature, and each initiated act and act subject to referendum which has been ratified by a majority of the registered qualified electors voting on the initiative or referendum. Except as provided in paragraph (2) of this subsection, such act shall take effect upon the expiration of the 30-calendar-day period (excluding Saturdays, Sundays, and holidays, and any day on which neither House is in session because of an adjournment sine die, a recess of more than 3 days, or an adjournment of more than 3 days) beginning on the day such act is transmitted by the Chairman to the Speaker of the House of Representatives and the President of the Senate, or upon the date prescribed by such act, whichever is later, unless during such 30-day period, there has been enacted into law a joint resolution disapproving such act. In any case in which any such joint resolution disapproving such an act has, within such 30-day period, passed both Houses of Congress and has been transmitted to the President, such resolution, upon becoming law, subsequent to the expiration of such 30-day period, shall be deemed to have repealed such act, as of the date such resolution becomes law. The provisions of § 1-206.04, except subsections (d), (e), and (f) of such section, shall apply with respect to any joint resolution disapproving any act pursuant to this paragraph.

(2) In the case of any such act transmitted by the Chairman with respect to any act codified in Title 22, 23, or 24 of the District of Columbia Code, such act shall take effect at the end of the 60-day period beginning on the day such act is transmitted by the Chairman to the Speaker of the House of Representatives and the President of the Senate unless, during such 60-day period, there has been enacted into law a joint resolution disapproving such act. In any case in which any such joint resolution disapproving such an act has, within such 60-day period, passed both Houses of Congress and has been transmitted to the President, such resolution, upon becoming law subsequent to the expiration of such 60-day period shall be deemed to have repealed such act, as

of the date such resolution becomes law. The provisions of § 1-206.04, relating to an expedited procedure for consideration of joint resolutions, shall apply to a joint resolution disapproving such act as specified in this paragraph.

(3) The Council shall submit with each Act transmitted under this subsection an estimate of the costs which will be incurred by the District of Columbia as a result of the enactment of the act in each of the first 4 fiscal years for which the act is in effect, together with a statement of the basis for such estimate.

(Dec. 24, 1973, 87 Stat. 813, Pub. L. 93-198, title VI, § 602; Sept. 7, 1976, 90 Stat. 1220, Pub. L. 94-402; Oct. 27, 1978, 92 Stat. 2023, Pub. L. 95-526; Dec. 23, 1981, 95 Stat. 1493, Pub. L. 97-105, § 17; Oct. 12, 1984, 98 Stat. 1974, Pub. L. 98-473, § 131(d)-(g); Apr. 17, 1995, 109 Stat. 107, 142, Pub. L. 104-8, §§ 108(b)(2), 301(d)(1).)

Cross references. — Budget and financial management, issuance of general obligation bonds, see § 1-204.62.

Budget and financial management, permitting designated authority to borrow funds for preconstruction activities, convention center and sports arena authorization, see § 47-398.01.

Budget and financial management, review of Council acts, see § 47-392.03.

Budget and financial management, revisions to financial plan or budget not affecting appropriations, see § 47-392.02.

Council authority, limitations on power to repeal or alter any provision of subchapter III of chapter 73 of title 5, United States Code, restrictions on political activity, see § 1-207.61.

Elections, general provisions, effective date, see § 1-1021.04.

Elections, initiatives and referenda, see § 1-1001.16.

Law revision commission, chapter effective date, see § 45-305.

Mental health information, chapter effective date, see § 7-1208.07.

Prevention of blindness in infants, newborn screening, effective date, see § 7-840.

Qualified high technology companies, allocation of assistance funds, see § 2-1221.03.

Revenue anticipation notes, issuance, effective date, see § 1-204.72.

Revenue bonds and other obligations, authority of Council, see § 1-204.90.

Rhodes tavern, historic landmark and historic district protection, effective date, see § 6-1115.

Rights of mentally retarded citizens, chapter effective date, see § 7-1306.05.

Tax, residents and nonresidents, credits, effective date, see § 47-1806.04.

Vital records system, effective date, see § 7-228.

Workers' compensation, chapter effective date, see § 32-1545.

Section references. — This section is referred to in §§ 1-203.02, 1-203.03, 1-204.04, 1-204.75, 1-204.105, 1-207.18, 1-308.06, 2-1217.78, 2-1221.03, 10-1601.03, 10-1602.03, 24-751.13, 34-2202.10, 42-2812.04, 42-2812.09, 47-340.04, 47-340.09, and 47-1401.

Prior Codifications. — 1981 Ed., § 1-233. 1973 Ed., § 1-147.

References in text. — "Chapter 11 of Title 31, United States Code", referred to in the first sentence in paragraph (1) of subsection (c) of this section, was substituted for "the Budget and Accounting Act, 1921 (31 U.S.C. § 1 et seq.)" on authority of § 4(b) of the Act of September 13, 1982, Pub. L. 97-258.

Congressional disapproval of acts of the Council. — Congress has utilized its authority under subsection (c) of this section to nullify the following acts of the Council of the District of Columbia:

(1) The Location of Chanceries Act of 1979, D.C. Act 3-120, adopted on final reading by the Council October 9, 1979, signed by the Mayor November 9, 1979 (26 DCR 2188). Disapproval was effective December 20, 1979.

(2) The District of Columbia Sexual Assault Reform Act of 1981, D.C. Act 4-69, adopted on final reading by the Council July 14, 1981, signed by the Mayor July 2, 1981 (28 DCR 3409). Disapproval was effective October 1, 1981.

(3) The Schedule of Heights Amendment Act of 1990, Act 8-329, adopted on final reading by the Council December 18, 1990, signed by the Mayor December 27, 1990 (38 DCR 369). The disapproval was effective on March 21, 1991.

At the time of the disapproval of the first act, section 602(c)(1) of the Home Rule Act required both Houses of Congress to adopt a concurrent resolution disapproving the act. Act 3-120 was disapproved by both Houses of Congress in S.Con.Res.63 (in Lieu of H.Con.Res.228).

Act 4-69 would have amended titles 22 and 23 of the District of Columbia Code. At the time

of the disapproval, section 602(c)(2) provided that either House of Congress could adopt a resolution disapproving an act of the Council that amended or would be codified in titles 22, 23, or 24. Act 4-69 was disapproved by one House of Congress, the House of Representatives, in H.Res.208.

By the time the Council transmitted Act 8-329 to Congress, the Supreme Court had decided, in *Immigration and Naturalization Service v. Chada*, 462 U.S. 919, 103 S. Ct. 2764 (1983), that a provision of the Immigration and Naturalization Act that allowed one House of Congress to invalidate a decision of the Executive Branch violated the constitutional doctrine of separation of powers. Congress amended the Home Rule Act to conform with the Chada decision. Section 602 was amended to require that in order to disapprove an act of the Council, both Houses of Congress must pass a joint resolution that would then require the signature of the President. Act 8-329 was disapproved by joint resolution of Congress and signature of the President and became Public Law 102-11.

Editor's notes. — Waiver of Congressional review for certain revenue bond acts: Section 1 of Pub. L. 99-242 amended § 2 of Pub. L. 99-216 to include also D.C. Laws 6-78 and 6-79. Section 2 provided that they should take effect as if included in Pub. L. 99-216, with certain restrictions.

Section 2 of Pub. L. 99-216 also waived Congressional review for D.C. Laws 6-75 and 6-70, providing that they take effect on the date of enactment of the public law, which was approved Dec. 26, 1985.

Waiver of Congressional review for certain revenue bond acts: Section 136(a) of H.R. 3067, amended by H.R. 99-419, incorporated in Pub. L. 99-190 by § 101(c), the D.C. Appropriation Act, 1986, provided that § 602(c) of the Self-Government Act (Pub. L. 93-198) shall not

apply to certain acts authorizing the issuance of revenue bonds. Section 136(b) of H.R. 3067 provided that the subject revenue bond acts shall take effect on the date of enactment of the act. Pub. L. 99-190 was approved Dec. 19, 1985. The revenue bond acts subject to waiver of review, set forth in § 136(c) of H.R. 3067, are The Georgetown University Higher Education Facilities Revenue Bond Act of 1985 (D.C. Law 6-75), The Sibley Memorial Hospital Revenue Bond Act of 1985 (D.C. Law 6-70), The Forrest Marbury House Project Revenue Bond Act of 1985 (D.C. Law 6-86), The American University Revenue Bond Act of 1985 (D.C. Law 6-78), and The George Washington University Revenue Bond Act of 1985 (D.C. Law 6-79). D.C. Schedule of Heights Amendment disapproved by Congress: Pursuant to Pub. L. 102-11, 105 Stat. 33, effective March 12, 1991, it was resolved by the Senate and House of Representatives of the United States of America in Congress assembled, that the Congress hereby disapproves of the action of the District of Columbia Council described as follows: The Schedule of Heights Amendment Act of 1990 (D.C. Act 8-329), signed by the Mayor of the District of Columbia on December 27, 1990, and transmitted to Congress pursuant to section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act on January 15, 1991.

Borrowing of funds for arena preconstruction activities: For provisions permitting a designated authority to borrow funds for preconstruction activities relating to Gallery Place Sports Arena, see § 47-398.01.

Application of § 301(d)(1) of Pub. L. 104-8: Section 301(d)(2) of Pub. L. 104-8, 109 Stat. 142, provided that the amendment made by paragraph (d)(1) shall apply to Acts of the Council transmitted on or after October 1, 1995.

Fiscal year: See Historical and Statutory Notes following § 1-203.03.

CASE NOTES

ANALYSIS

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Acts to amend or repeal acts of Congress.

Home Rule Act provision barring the D.C. Council from amending Title 24 of the D.C. Code for four years did not trump applicability of the D.C. Comprehensive Merit Personnel Act to employees of the District of Columbia Department of Corrections, so as to preserve their status as federal employees; four-year bar was limited to criminal laws and criminal procedure, and had nothing to do with employee personnel rights or benefits. *Lucas v. United States*, 268 F.3d 1089, 2001 U.S. App. LEXIS 23589 (C.A.D.C. 2001).

District of Columbia did not have authority to repeal or amend federal Narcotic Addicts Rehabilitation Act, as the Act was applicable to federal offenders nationwide, although the Act's reach with respect to offenders convicted under District of Columbia law was limited in scope to the District, and accordingly, amendments to District's Uniform Controlled Substances Act could not and did not work effective repeal of any of the provisions of the federal Act, including those in conflict with the amended District Act; District is not authorized to repeal legislation national in scope, notwithstanding that the repeal would affect enforcement of legislation only within the District's jurisdiction. D.C. Code 1981, §§ 1-233(a)(3), 33-501 et seq.; 18 U.S.C. (1982 Ed.) §§ 4251-4255. *McConnell v. United States*, 537 A.2d 211, 1988 D.C. App. LEXIS 37 (1988).

District of Columbia Workers' Compensation Act, which repealed existing workmen's compensation legislation applicable to the private sector in District of Columbia, did not violate section of District of Columbia Self-Government and Governmental Reorganization Act which prohibits District of Columbia Council from "enacting any act to amend or repeal any Act of Congress, which concerns the functions or property of the United States or which is not restricted in its application exclusively in or to the District," even though United States Department of Labor had been responsible for administering the local workmen's compensation program, in that such function performed by Secretary of Labor was a purely local one. D.C. Code 1981, § 1-233(a)(3); D.C. Code 1973, § 36-501; Longshoremen's and Harbor Workers' Compensation Act, § 39(b), 33 U.S.C. § 939(b). *District of Columbia v. Greater Washington Cent. Labor Council*, 442 A.2d 110, 1982 D.C. App. LEXIS 288 (1982), writ of certiorari denied by 460 U.S. 1016, 103 S. Ct. 1261, 75 L. Ed. 2d 487, 1983 U.S. LEXIS 3736, 51 U.S.L.W. 3634 (1983).

Application restricted to District.

Provisions of the District of Columbia Compulsory/No-Fault Motor Vehicle Insurance Act [D.C. Code 1981, § 35-2103(a)] requiring residents to obtain out-of-state coverage does not violate the Self-Government Act [D.C. Code 1981, § 1-233(a)(3)] which prohibits the enactment of any act not restricted in its application exclusively in or to the District. *Dimond v. District of Columbia*, 618 F. Supp. 519, 1984 U.S. Dist. LEXIS 10681 (1984), affirmed in part and reversed in part by 792 F.2d 179, 253 U.S. App. D.C. 111, 1986 U.S. App. LEXIS 25293 (1986).

Action by Congress within District of Columbia Self-Government and Governmental Reorganization Act expressly transferring the public workmen's compensation program to

District of Columbia, in absence of a concurrent transfer of private employment workmen's compensation, did not reflect congressional intent to prohibit local government from legislating with respect to private workmen's compensation. Longshoremen's and Harbor Workers' Compensation Act, §§ 1 et seq., 39, 33 U.S.C. §§ 901 et seq., 939; D.C. Code 1981, §§ 1-204, 1-233(a)(3); 5 U.S.C. § 8101 et seq. *District of Columbia v. Greater Washington Cent. Labor Council*, 442 A.2d 110, 1982 D.C. App. LEXIS 288 (1982), writ of certiorari denied by 460 U.S. 1016, 103 S. Ct. 1261, 75 L. Ed. 2d 487, 1983 U.S. LEXIS 3736, 51 U.S.L.W. 3634 (1983).

Authority over federal agencies.

District of Columbia Council did not have authority, under provision in Congressional statute dividing prosecutorial authority between the United States Attorney's Office for the District of Columbia (USAO) and Office of the Attorney General for the District of Columbia (OAG) that assigned prosecutions to the USAO "except as otherwise allowed by law," to assign prosecutions for violation of the false claims statute passed by Council to the OAG rather than the USAO; though District of Columbia Home Rule Act (HRA) expanded Council's legislative authority, the HRA expressly precluded the Council from enacting legislation relating to the duties of the USAO, and only Congress had the authority to assign to the OAG the power to prosecute crimes under the "except as otherwise allowed by law" clause. In re Prosecution of Crawley, 978 A.2d 608, 2009 D.C. App. LEXIS 354 (2009).

District of Columbia Workers' Compensation Act did not violate section of District of Columbia Self-Government and Governmental Reorganization Act which prohibits District of Columbia Council from exceeding its present authority over any other Federal agency, even though Council eliminated a function previously performed by Department of Labor with regard to workmen's compensation applicable to the private sector, in that enactment of Workers' Compensation Act neither increased nor decreased District's authority over Department of Labor, but rather it removed one category of cases handled by such agency, and decrease of workload of federal agency charged with local responsibility did not constitute a proscribed exercise of authority over such agency. D.C. Code 1981, §§ 1-233(b), 36-301 et seq. *District of Columbia v. Greater Washington Cent. Labor Council*, 442 A.2d 110, 1982 D.C. App. LEXIS 288 (1982), writ of certiorari denied by 460 U.S. 1016, 103 S. Ct. 1261, 75 L. Ed. 2d 487, 1983 U.S. LEXIS 3736, 51 U.S.L.W. 3634 (1983).

Congressional review.

District court which dismissed suit, did not abuse its discretion by hearing Congressmen's

action seeking declaratory judgment requiring District of Columbia Council to resubmit Assault Weapon Manufacturing Strict Liability Act to Congress for review pursuant to Home Rule Act; although it was argued that Congressmen could seek relief simply by introducing legislation to repeal Liability Act, relief sought by Congressmen was to review Liability Act before it became law, rather than repeal of Liability Act. D.C. Code 1981, § 1-233(c)(1). *Bliley v. Kelly*, 23 F.3d 507, 1994 U.S. App. LEXIS 11716 (C.A.D.C. 1994).

Congressmen stated cause of action under § 1983 in their action seeking declaratory judgment requiring Counsel of District of Columbia to resubmit District of Columbia's Assault Weapon Manufacturing Strict Liability Act to Congress for review pursuant to Home Rule Act; statutory scheme confers right of participation on Congress that is not beyond competence of judicial right to enforce. 42 U.S.C. § 1983; D.C. Code 1981, § 1-233(c)(1). *Bliley v. Kelly*, 23 F.3d 507, 1994 U.S. App. LEXIS 11716 (C.A.D.C. 1994).

Counsel of District of Columbia's enactment of legislation temporarily repealing Assault Weapon Manufacturing Strict Liability Act resulted in suspension of Congress' review period under Home Rule Act pending final action on Liability Act by District of Columbia; enactment of Emergency and Temporary Repealers relieved Congress of need to review legislation that Council itself was in process of repealing. D.C. Code 1981, § 1-233(c)(1). *Bliley v. Kelly*, 23 F.3d 507, 1994 U.S. App. LEXIS 11716 (C.A.D.C. 1994).

Where referendum was passed that preserved District of Columbia's Assault Weapon Manufacturing Strict Liability Act and rejected legislation repealing Liability Act, new 30-day period for congressional review of Liability Act began on day after result of referendum was announced; with that announcement, Congress was on notice that, absent congressional resolution of disapproval, Liability Act would take effect by operation of law on expiration of legislation temporarily repealing Liability Act. D.C. Code 1981, § 1-233(c)(1). *Bliley v. Kelly*, 23 F.3d 507, 1994 U.S. App. LEXIS 11716 (C.A.D.C. 1994).

District of Columbia's emergency repealer of statute did not toll Congress' 30-day consideration period, and the statute thus took effect on the completion of the initial 30-day period. D.C. Code 1981, § 1-233(c)(1). *Bliley v. Kelly*, 793 F. Supp. 353, 1992 U.S. Dist. LEXIS 8643 (1992), affirmed by 23 F.3d 507, 306 U.S. App. D.C. 199, 1994 U.S. App. LEXIS 11716 (1994).

Subsequent to original transmittal to Congress of District of Columbia statute, there was no need for the statute to be retransmitted, either before or after passage of referendum which repealed the District of Columbia's per-

manent repeal of the statute. D.C. Code 1981, § 1-233(c)(1). *Bliley v. Kelly*, 793 F. Supp. 353, 1992 U.S. Dist. LEXIS 8643 (1992), affirmed by 23 F.3d 507, 306 U.S. App. D.C. 199, 1994 U.S. App. LEXIS 11716 (1994).

Federal court would exercise equitable discretion to dismiss for lack of standing action by congressional representatives seeking declaration that local statute of the District of Columbia was invalid for failure to comply with the Home Rule Act where all that they could obtain by their action was a transmittal of the statute to Congress, which could then invalidate it by joint resolution, and where Congress could enact legislation directly repealing the statute. D.C. Code 1981, § 1-233(c)(1). *Bliley v. Kelly*, 793 F. Supp. 353, 1992 U.S. Dist. LEXIS 8643 (1992), affirmed by 23 F.3d 507, 306 U.S. App. D.C. 199, 1994 U.S. App. LEXIS 11716 (1994).

Once act adopted by the District of Columbia Council has been transmitted to Congress, legislative process of the District insofar as the Council and mayor are concerned is at an end, and the only circumstances that can prevent the act from becoming law are the passage of a joint resolution by Congress or the filing of a valid referendum petition. D.C. Code 1981, §§ 1-229(a), 1-233(c)(1), 1-282(b)(1). *Atkinson v. District of Columbia Bd. of Elections & Ethics*, 597 A.2d 863, 1991 D.C. App. LEXIS 279 (1991).

Construction and application.

The primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he has used. *Brizill v. D.C. Bd. of Elections & Ethics*, 911 A.2d 1212, 2006 D.C. App. LEXIS 622 (2006).

Contract clause.

District of Columbia Self-Government Act did not bind Congress to contract clause for congressional legislation for District of Columbia despite delegation of legislative authority to local officials; Act expressly recognized congressional authority to exempt congressional legislation for District of Columbia from any contract clause limitation. U.S. Const. Art. 1, § 10, cl. 1; D.C. Code 1981, §§ 1-204, 1-206, 1-233, 47-313. *District of Columbia v. American Fed'n of Gov't Employees*, 619 A.2d 77, 1993 D.C. App. LEXIS 13 (1993), writ of certiorari denied by 510 U.S. 933, 114 S. Ct. 347, 126 L. Ed. 2d 312, 1993 U.S. LEXIS 6594, 62 U.S.L.W. 3288, 144 L.R.R.M. (BNA) 2520 (1993).

Emergency legislation.

Passage by the District of Columbia Council of an emergency repealer did not permanently deprive act of legal effect. D.C. Code 1981, §§ 1-229(a), 1-233(c)(1). *Atkinson v. District of Columbia Bd. of Elections & Ethics*, 597 A.2d 863, 1991 D.C. App. LEXIS 279 (1991).

Emergency Repealer Act and Temporary Repealer Act, directed at previously passed Act imposing strict liability on manufacturers of assault weapons, were attempts to repeal that Act and not attempts to withdraw it from congressional consideration. D.C. Code 1981, §§ 1-229(a), 1-233(c)(1). *Atkinson v. District of Columbia Bd. of Elections & Ethics*, 597 A.2d 863, 1991 D.C. App. LEXIS 279 (1991).

Emergency Repealer Act directed to previously adopted Act imposing strict liability on manufacturers of assault weapons did not nullify the Act, and subsequent Act repealing the Assault Weapon Manufacturing Strict Liability Act was a proper matter for referendum. D.C. Code 1981, §§ 1-229(a), 1-233(c)(1). *Atkinson v. District of Columbia Bd. of Elections & Ethics*, 597 A.2d 863, 1991 D.C. App. LEXIS 279 (1991).

Passage by the District of Columbia Council of temporary, emergency, and full repeals of previously adopted Act which had been sent to Congress for consideration did not affect the process of congressional layover for the original Act. D.C. Code 1981, § 1-233(c)(1). *Atkinson v. District of Columbia Bd. of Elections & Ethics*, 597 A.2d 863, 1991 D.C. App. LEXIS 279 (1991).

District of Columbia Council did not exceed its emergency legislative authority under Home Rule Act in enacting second, substantially identical 90-day emergency act under expedited procedures to provide extension of law to preserve status quo and to bridge gap that would otherwise inevitably occur when initial Emergency Act expired before conclusion of congressional review period of 60 days on identical legislation enacted by Council after two readings; when Council has not bypassed second reading and congressional review requirements, 90-day limitation on Council's authority to enact Emergency Act is properly viewed, as part of legislative scheme, as applying only to act and not to its substance. D.C. Code 1981, §§ 1-233(c), 22-101 et seq., 23-101 et seq., 24-103 et seq. *United States v. Alston*, 580 A.2d 587, 1990 D.C. App. LEXIS 218 (1990).

Federal employees.

Statute [5 U.S.C. § 8344] which sets forth federal formula for determining total compensation certain federal employees may receive from the Government did not preclude District of Columbia from reducing, by statute, salaries of retired federal employees who receive military pensions. D.C. Code 1981, §§ 1-201 et seq., 1-233(c)(1), 1-612.3, 1-612.3(b, c); 5 U.S.C. § 5532; U.S. Const. Art. 6, cl. 2. *Barnes v. District of Columbia*, 611 F. Supp. 130, 1985 U.S. Dist. LEXIS 19787 (1985).

Functions or property of the United States.

Acts, which were passed by the District of

Columbia city council closing portion of particular street and transferring title to that portion of the street to developers, who planned to create international trade center covering two city blocks on that portion of the street, were valid exercises of council's authority under the Home Rule Act, even though the HRA prohibited council from passing Acts concerning "functions or property of the United States" and even though title to street in question was vested in the United States. D.C. Code 1981, §§ 1-211 et seq., 1-233(a)(3). *Techworld Dev. Corp. v. D.C. Preservation League*, 648 F. Supp. 106, 1986 U.S. Dist. LEXIS 21851 (1986), vacated by, remanded by 1987 U.S. App. LEXIS 18346 (D.C. Cir. June 2, 1987).

Gambling.

Allowing video lottery terminals in the District of Columbia would exceed legislative powers granted to the District and its citizens by the Home Rule Act, and, thus, proposed initiative to allow such terminals was invalid as authorizing activities prohibited by the Johnson Act making it unlawful to manufacture, recondition, repair, sell, transport, possess, or use any gambling device within the District of Columbia and certain possessions and territories of the United States; District Council lacked authority to amend or repeal any Act of Congress not restricted in its application exclusively in or to the District, and even though the Johnson Act applied only to jurisdictions where Congress has the ultimate legislative authority, it was not restricted in its application exclusively in or to the District. *Brizill v. D.C. Bd. of Elections & Ethics*, 911 A.2d 1212, 2006 D.C. App. LEXIS 622 (2006).

Jurisdiction of courts, generally.

Certification of question as to whether defendant was entitled to credit against sentence imposed upon revocation of parole for time spent on parole was proper; relevant dicta in District of Columbia Court of Appeals opinions sent mixed signals, sister circuit of federal Court of Appeals had answered question differently than arguably controlling dicta of District of Columbia Court of Appeals, District of Columbia Court of Appeals had probably not had opportunity to address issue with benefit of full briefing, and issue did not raise exclusively federal question as to interpretation of Home Rule Act. D.C. Code 1981, §§ 1-233(c)(2), 11-723, 24-431(a). *Noble v. United States Parole Comm'n*, 82 F.3d 1108, 1996 U.S. App. LEXIS 10163 (C.A.D.C. 1996).

Pendent jurisdiction could be exercised over challenge to District of Columbia no-fault law based on alleged violation of the District of Columbia Self-Government Act where plaintiff also presented a substantial equal protection claim. D.C. Code 1981, § 1-233(a)(4, 8); 18

U.S.C. § 1331. *Dimond v. District of Columbia*, 792 F.2d 179, 1986 U.S. App. LEXIS 25293 (C.A.D.C. 1986).

Provision of law is exclusively applicable to District of Columbia, and thus does not provide federal question basis for federal jurisdiction, when law is enacted by Congress as local legislature for District of Columbia, is applicable only to District, and is tailored to meet specifically local needs. *Roth v. D.C. Courts*, 160 F.Supp.2d 104, 2001 U.S. Dist. LEXIS 12852 (2001).

Suit by lawyers and investigator against District of Columbia courts under Prompt Pay Act (PPA), seeking interest on fees for services rendered to indigent criminal defendants under District of Columbia Criminal Justice Act, invoked federal question jurisdiction; PPA was not exclusively applicable to District of Columbia, since it applied to all federal agencies, Tennessee Valley Authority, and United States Postal Service, in addition to District of Columbia courts. *Roth v. D.C. Courts*, 160 F.Supp.2d 104, 2001 U.S. Dist. LEXIS 12852 (2001).

Prompt Pay Act's (PPA) divestiture of jurisdiction of district court over claims against District of Columbia courts only relates to jurisdiction of district court to award monetary relief, not to award declaratory relief. *Roth v. D.C. Courts*, 160 F.Supp.2d 104, 2001 U.S. Dist. LEXIS 12852 (2001).

District court declined to exercise discretion to entertain suit by lawyers and investigator who provided services to indigent criminal defendants under District of Columbia Criminal Justice Act, against District of Columbia courts, seeking declaration that courts' method for determining when interest began to accrue on unpaid fees violated Prompt Pay Act (PPA); PPA precluded claim for monetary relief, which lawyers and investigator were required to pursue through administrative contracts dispute resolution process, and thus court's retention of declaratory judgment action would have resulted in piecemeal litigation. *Roth v. D.C. Courts*, 160 F.Supp.2d 104, 2001 U.S. Dist. LEXIS 12852 (2001).

Superior court had jurisdiction to review Contract Appeals Board's (CAB) decisions in bid protest, and thus, superior court also possessed power under All Writs Act to issue temporary relief to disappointed bidder, even though CAB had not yet issued decision. *D.C. Code* 1981, §§ 1-233(a)(4), 1-1181.1 to 1-1192.6, 1-1189.3, 1-1502(8), 1-1510(a), 11-921; 18 U.S.C. §§ 1651, 1651(a). *District of Columbia v. Group Ins. Admin.*, 633 A.2d 2, 1993 D.C. App. LEXIS 261 (1993).

Statute providing that Superior Court may not vacate a judgment foreclosing right of redemption unless jurisdiction was lacking or there was fraud in foreclosure, which limits or otherwise overrides Superior Court's ability to

vacate judgments under rule of civil procedure setting forth six grounds for relief from a final judgment, restricts Superior Court's equity jurisdiction and, thus, violates provision of Home Rule Act that prohibits District of Columbia Council from enacting any law with respect to congressional provisions relating to jurisdiction of the District of Columbia courts. *Shoetan v. Link, et al.*, 137 WLR 2685 (Super. Ct. 2009).

Laws appropriating funds.

Regardless of extent of responsibility for allocation of District of Columbia revenues that budgeting process assigns to District government's elected officials through their adoption of Budget Request Act, every District of Columbia Appropriations Act remains exclusively act of Congress that is subjected to same procedures that govern any appropriations measure, which is different and more active process than mere override oversight that is reserved for District's ordinary legislation. *U.S. Const. Art. 1, § 10, cl. 1; D.C. Code* 1981, §§ 1-233(c), 47-304. *District of Columbia v. American Fed'n of Gov't Employees*, 619 A.2d 77, 1993 D.C. App. LEXIS 13 (1993), writ of certiorari denied by 510 U.S. 933, 114 S. Ct. 347, 126 L. Ed. 2d 312, 1993 U.S. LEXIS 6594, 62 U.S.L.W. 3288, 144 L.R.R.M. (BNA) 2520 (1993).

Limitation in District of Columbia initiative statute prohibiting electors from proposing laws appropriating funds applies to more than Budget Request Act; language of limitation must refer to council's role in District government's budget process. *D.C. Code* 1981, §§ 1-227(e, f), 1-229(a), 1-233(c), 1-281(a), 1-285, 47-304, 47-313(a). *Hessey v. District of Columbia Bd. of Elections & Ethics*, 601 A.2d 3, 1991 D.C. App. LEXIS 318 (1991).

Laws relating to federal courts.

Medical expense threshold requirement of \$5,000 for personal injury suits imposed by District of Columbia no-fault law abolished a cause of action in tort for certain harm proximately caused by driver's negligence and did not merely alter the jurisdiction of the courts to hear such claims, and thus did not violate provision of the Self-Government Act prohibiting the District of Columbia from enacting any statute relating to the United States District Court for the District of Columbia. *D.C. Code* 1981, §§ 1-233(a)(4, 8), 35-2105(b)(6). *Dimond v. District of Columbia*, 792 F.2d 179, 1986 U.S. App. LEXIS 25293 (C.A.D.C. 1986).

Challenge to District of Columbia statute on grounds that it violated provision of the Self-Government Act prohibiting the District of Columbia Council from enacting any statute relating to the district court for the District of Columbia did not present a federal question. *D.C. Code* 1981, § 1-233(a)(4, 8); 18 U.S.C. § 1331. *Dimond v. District of Columbia*, 792

F.2d 179, 1986 U.S. App. LEXIS 25293 (C.A.D.C. 1986).

Organization and jurisdiction of local courts.

Provision of Prompt Pay Act (PPA) which states that claim under PPA may be filed against District of Columbia courts in same manner as claims are filed with respect to contracts to provide property or services for District of Columbia courts vested jurisdiction over PPA claims in local contracts dispute resolution process to exclusion of district court. *Roth v. D.C. Courts*, 160 F.Supp.2d 104, 2001 U.S. Dist. LEXIS 12852 (2001).

Interpreting Uniform Arbitration Act (UAA) to permit appellate review of order confirming arbitration award as to fewer than all parties or claims, by creating appellate jurisdiction where none previously existed, could possibly contravene Home Rule Act and render statute invalid. D.C. Code 1981, §§ 1-233(a)(4), 16-4317. *Umana v. Swidler & Berlin, Chtd.*, 669 A.2d 717, 1995 D.C. App. LEXIS 269 (1995).

Home Rule Act's limitation on enlarging congressionally prescribed limitations on appellate jurisdiction does not limit District of Columbia Council's authority to act or alter substantive law to be applied by courts. D.C. Code 1981, § 1-233(a)(4). *Umana v. Swidler & Berlin, Chtd.*, 669 A.2d 717, 1995 D.C. App. LEXIS 269 (1995).

Council of District of Columbia may not expand or reduce jurisdiction of local courts. D.C. Code 1981, §§ 1-233(a)(4), 11-921. *District of Columbia v. Group Ins. Admin.*, 633 A.2d 2, 1993 D.C. App. LEXIS 261 (1993).

Procurement Practices Act lacked authority to alter existing jurisdiction of superior court, where Act was enacted by council of District of Columbia, not initiated by Congress. D.C. Code 1981, §§ 1-233(a)(4), 1-1181.1 to 1-1192.6, 11-921. *District of Columbia v. Group Ins. Admin.*, 633 A.2d 2, 1993 D.C. App. LEXIS 261 (1993).

Proposed electoral initiative, to create Office of Public Advocate for Assessments and Taxation (OPA) with authority to appear and advocate on behalf of interest of public and general taxpayers of District of Columbia in administrative tax assessment proceedings and to appeal tax assessments by mayor to superior court and Court of Appeals, would not impermissibly expand jurisdiction of courts in violation of Home Rule Act. D.C. Code 1981, §§ 1-233(a)(4), 1-1320(b)(1). *Hessey v. Burden*, 584 A.2d 1, 1990 D.C. App. LEXIS 296 (1990), remanded by 615 A.2d 562, 1992 D.C. App. LEXIS 280 (D.C. 1992).

District of Columbia Workers' Compensation Act, which repealed existing workmen's compensation legislation applicable to private sector in the District of Columbia, did not violate section of District of Columbia Self-Govern-

ment and Governmental Reorganization Act which prohibits District of Columbia Council from passing any legislation relating to local federal district court or any other court of United States in District, even though under Longshoremen's Act, which had governed workmen's compensation for District, United States courts had authority to enforce and review compensation awards in that Council's action merely repealed congressional incorporation of a national law into local statutes. D.C. Code 1981, §§ 1-233(a)(8), 11-101 et seq., 36-301 et seq.; Longshoremen's and Harbor Workers' Compensation Act, § 21(c, d), 33 U.S.C. § 921(c, d). *District of Columbia v. Greater Washington Cent. Labor Council*, 442 A.2d 110, 1982 D.C. App. LEXIS 288 (1982), writ of certiorari denied by 460 U.S. 1016, 103 S. Ct. 1261, 75 L. Ed. 2d 487, 1983 U.S. LEXIS 3736, 51 U.S.L.W. 3634 (1983).

District of Columbia Workers' Compensation Act did not increase jurisdiction of District of Columbia courts in violation of section of District of Columbia Self-Government and Governmental Reorganization Act which prohibited District of Columbia Council from enacting any act, resolution, or rule relating to organization and jurisdiction of District of Columbia courts where enforcement of a compensation order fell within already existing jurisdiction vested in District of Columbia Superior Court, and where review of final compensation orders by District of Columbia Court of Appeals fell within preexisting jurisdiction of such court to review administrative proceedings. D.C. Code 1981, §§ 1-233(a)(4), 11-722, 11-921(a), 36-322(b)(3), (c). *District of Columbia v. Greater Washington Cent. Labor Council*, 442 A.2d 110, 1982 D.C. App. LEXIS 288 (1982), writ of certiorari denied by 460 U.S. 1016, 103 S. Ct. 1261, 75 L. Ed. 2d 487, 1983 U.S. LEXIS 3736, 51 U.S.L.W. 3634 (1983).

Taxation of nonresidents.

Provisions of the District of Columbia Revenue Act of 1947, imposing unincorporated business franchise (UB) tax on certain portion of personal income of nonresident owners of unincorporated businesses, were not repealed by the District of Columbia Self-Government and Governmental Reorganization Act (Home Rule Act), which prohibited the District council from imposing any tax on personal income of nonresidents, and thus the council retained power to impose UB taxes on the personal income of the nonresident partners in partnerships that generated rental income from real estate located in the District; legislation authorizing the council to establish the UB tax rate was enacted after the passage of Home Rule Act. *District of Columbia v. Bender*, 906 A.2d 277, 2006 D.C. App. LEXIS 494 (2006), writ of certiorari denied by 549 U.S. 1207, 127 S. Ct. 1356, 167 L. Ed. 2d

77, 2007 U.S. LEXIS 2094, 75 U.S.L.W. 3435 (2007).

Partner who changed domicile in middle of year could not include on his individual return distributive share of partnership loss distributed during his normal individual taxable year but after he became nonresident, even though statute required that taxpayer's income be computed based on same fiscal year used for federal taxation; partner had neither duty nor right to report income received or losses incurred after he became nonresident. D.C. Code 1981, §§ 1-233(a)(5), 47-1803.2(a)(2)(F), 47-1804.1 to 47-1804.3. *District of Columbia v. Terris*, 604 A.2d 5, 1992 D.C. App. LEXIS 56 (1992).

Individual income tax liability is predicated solely on taxpayer's resident status and not on source of income. D.C. Code 1981, §§ 1-233(a)(5), 47-1806.1, 47-1810.1(a)(1). *District of Columbia v. Terris*, 604 A.2d 5, 1992 D.C. App. LEXIS 56 (1992).

District of Columbia tax on net income of unincorporated businesses in District for which business's owner was personally liable even though owner was state resident was tax on personal income of nonresident of District in

violation of Home Rule Act and, thus, owner was not entitled to tax credit in state for payment of District tax under statute prohibiting out-of-state tax credit if tax was illegal and unauthorized under other state's statute. Code 1950, § 58.1-332, subd. A; D.C. Code 1981, §§ 1-233(a)(5), 47-1808.1 to 47-1808.6. *Mathy v. Commonwealth Dep't of Taxation*, 253 Va. 356, 483 S.E.2d 802, 1997 Va. LEXIS 51 (1997), writ of certiorari denied by 522 U.S. 967, 118 S. Ct. 414, 139 L. Ed. 2d 316, 1997 U.S. LEXIS 6734, 66 U.S.L.W. 3336 (1997).

Validity of prior law.

One House of Congress veto provision of the Home Rule Act, D.C. Code 1981, §§ 1-201 to 1-295, is unconstitutional for failing to meet requirements of Article I of the United States Constitution involving bicameralism and presentment of bills to the President. U.S.C. Const. Art. 1, § 7, cls. 2, 3. *Gary v. United States*, 499 A.2d 815, 1985 D.C. App. LEXIS 520 (1985), writ of certiorari denied by 475 U.S. 1086, 106 S. Ct. 1470, 89 L. Ed. 2d 725, 1986 U.S. LEXIS 936, 54 U.S.L.W. 3630 (1986), writ of certiorari denied by 477 U.S. 906, 106 S. Ct. 3279, 91 L. Ed. 2d 568, 1986 U.S. LEXIS 2180, 54 U.S.L.W. 3840 (1986).

§ 1-206.03. Budget process; limitations on borrowing and spending.

(a) Nothing in this chapter shall be construed as making any change in existing law, regulation, or basic procedure and practice relating to the respective roles of the Congress, the President, the federal Office of Management and Budget, and the Comptroller General of the United States in the preparation, review, submission, examination, authorization, and appropriation of the total budget of the District of Columbia government.

(b)(1) No general obligation bonds (other than bonds to refund outstanding indebtedness) or Treasury capital project loans shall be issued during any fiscal year in an amount which would cause the amount of principal and interest required to be paid both serially and into a sinking fund in any fiscal year on the aggregate amounts of all outstanding general obligation bonds and such Treasury loans, to exceed 17% of the District revenues (less any fees or revenues directed to servicing revenue bonds, any revenues, charges, or fees dedicated for the purposes of water and sewer facilities described in § 1-204.90(a) (including fees or revenues directed to servicing or securing revenue bonds issued for such purposes), retirement contributions, revenues from retirement systems, and revenues derived from such Treasury loans and the sale of general obligation or revenue bonds) which the Mayor estimates, and the District of Columbia Auditor certifies, will be credited to the District during the fiscal year in which the bonds will be issued. Treasury capital project loans include all borrowings from the United States Treasury, except those funds advanced to the District by the Secretary of the Treasury under the provisions of §§ 47-3401 through 47-3401.05.

(2) Obligations incurred pursuant to the authority contained in subchapter II of Chapter 3 of Title 3, obligations incurred by the agencies transferred or established by §§ 1-202.01 and 1-202.02, whether incurred before or after such transfer or establishment, and obligations incurred pursuant to general obligation bonds of the District of Columbia issued prior to October 1, 1996, for the financing of Department of Public Works, Water and Sewer Utility Administration capital projects, shall not be included in determining the aggregate amount of all outstanding obligations subject to the limitation specified in the preceding paragraph.

(3) The 17% limitation specified in paragraph (1) of this subsection shall be calculated in the following manner:

(A) Determine the dollar amount equivalent to 17% of the District revenues (less any fees or revenues directed to servicing revenue bonds, any revenues, charges, or fees dedicated for the purposes of water and sewer facilities described in § 1-204.90(a) (including fees or revenues directed to servicing or securing revenue bonds issued for such purposes, retirement contributions, revenues from retirement systems, and revenues derived from such Treasury loans and the sale of general obligation or revenue bonds) which the Mayor estimates, and the District of Columbia Auditor certifies, will be credited to the District during the fiscal year for which the bonds will be issued;

(B) Determine the actual total amount of principal and interest to be paid in each fiscal year for all outstanding general obligation bonds (less the allocable portion of principal and interest to be paid during the year on general obligation bonds of the District of Columbia issued prior to October 1, 1996, for the financing of Department of Public Works, Water and Sewer Utility Administration capital projects) and such Treasury loans;

(C) Determine the amount of principal and interest to be paid during each fiscal year over the term of the proposed general obligation bond or such Treasury loan to be issued; and

(D) If in any 1 fiscal year the sum arrived at by adding subparagraphs (B) and (C) of this paragraph exceeds the amount determined under subparagraph (A) of this paragraph then the proposed general obligation bond or such Treasury loan in subparagraph (C) of this paragraph cannot be issued.

(c) Except as provided in subsection (f) of this section, the Council shall not approve any budget which would result in expenditures being made by the District government, during any fiscal year, in excess of all resources which the Mayor estimates will be available from all funds available to the District for such fiscal year. The budget shall identify any tax increases which shall be required in order to balance the budget as submitted. The Council shall be required to adopt such tax increases to the extent its budget is approved. For the purposes of this section, the Council shall use a federal payment amount not to exceed the amount authorized by Congress.

(d) Except as provided in subsection (f) of this section, the Mayor shall not forward to the President for submission to Congress a budget which is not balanced according to the provision of subsection (c) of this section.

(e) Nothing in this chapter shall be construed as affecting the applicability to the District government of the provisions of §§ 1341, 1342, and 1349 to 1351 and subchapter II of Chapter 15 of Title 31, United States Code.

(f) In the case of a fiscal year which is a control year (as defined in § 47-393(4)), the Council may not approve, and the Mayor may not forward to the President, any budget which is not consistent with the financial plan and budget established for the fiscal year under part B of subchapter VII of Chapter 3 of Title 47.

(Dec. 24, 1973, 87 Stat. 814, Pub. L. 93-198, title VI, § 603; Apr. 17, 1995, 109 Stat. 115, Pub. L. 104-8, § 202(f)(1); Aug. 6, 1996, 110 Stat. 1697, Pub. L. 104-184, § 3; enacted, Apr. 9, 1997, D.C. Law 11-254, § 2, 44 DCR 1575; Aug. 5, 1997, 111 Stat. 754, Pub. L. 105-33, §§ 11243(e), 11601(b)(1)(C), 11601(b)(1)(D), 11602(b), 11604.)

Cross references. — Council, powers and duties, see § 1-204.04.

Procurement organization, office of the inspector general, powers and duties, reports, see § 2-302.08.

Sanitary sewage works, rates and charges agreements with Maryland and Virginia, see § 1-204.87.

Self-government, district charter amendments, see § 1-203.03.

Self-government, legislative power of District, see § 1-203.02.

Water and sewer authority, budget, see § 1-204.5a.

Section references. — This section is referred to in §§ 1-204.43, 1-204.48, 1-204.24e, 1-204.61, 1-204.75, 1-204.90, 1-207.23, 34-2202.10, 42-2802, 47-306, 47-317.03a, 47-318, 47-392.14, 47-398.01, 47-398.02, and 47-1806.03.

Prior Codifications. — 1981 Ed., § 47-313.

1973 Ed., § 47-228.

References in text. — “§§ 1341, 1342, and 1349 to 1351 and subchapter II of Chapter 15 of Title 31, United States Code,” referred to in subsection (e) of this section, was substituted for “§ 3679 of the Revised Statutes of the United States (s 665 of Title 31, United States Code), the so-called Anti-Deficiency Act” on authority of § 4(b) of Pub. L. 97-258, approved September 13, 1982.

Editor's notes. — Borrowing of funds for arena preconstruction activities: For provisions permitting a designated authority to borrow funds for preconstruction activities relating to Gallery Place Sports Arena, see § 47-398.01.

Revenues as security for arena construction borrowing: For provisions permitting certain District revenues to be pledged as security for borrowing for preconstruction activities relating to Gallery Place Sports Arena, see § 47-398.02.

CASE NOTES

ANALYSIS

Authority of mayor.

Construction with other laws.

In general.

Authority of mayor.

Neither the Self-Government Act, applicable provisions of the federal Anti-Deficiency Act, nor the 1990 District of Columbia Appropriations Act gave mayor the authority to unilaterally reduce the fiscal year appropriation for the Board of Education. D.C. Code 1981, §§ 47-301, 47-310, 47-312(2), 47-313(c, d); 31 U.S.C. § 1341(a)(1)(A); District of Columbia Appropriations Act, 1990, 103 Stat. 1267. *Barry v. Bush*, 581 A.2d 308, 1990 D.C. App. LEXIS 255 (1990).

Mayor was authorized to reduce funds allocated to District of Columbia public library in budget enacted by District's Council and in Appropriations Act enacted by Congress, in attempting to balance District's budget, despite library's status as statutory independent

agency; mayor had statutory duty to balance budget regardless of sums previously appropriated, classification of library as statutory independent agency did not make library independent of mayor's fiscal authority, and neither Council's budget nor Appropriations Act contained any language requiring that reductions be made only in funding of agencies under mayor's control. D.C. Code 1981, §§ 1-299.6, 1-1502(5), 37-101, 37-106, 47-301(a)(1), 47-310(a)(9), 47-313(d); District of Columbia Appropriations Act, 1990, § 103, 103 Stat. 1267. *Hazel v. Barry*, 580 A.2d 110, 1990 D.C. App. LEXIS 226 (1990).

Construction with other laws.

District of Columbia's obligation, upon lender's demand, to purchase promissory note and deed of trust and take title to property was void ab initio without appropriation required by anti-deficiency act, even if Department of Housing and Urban Development (HUD) funds were available when lender attempted to exercise

the option; the lender could exercise the option no sooner than eighteen months after agreement was signed, and because the provision was never valid in the first place, the existence of any subsequent HUD funds was irrelevant. *Williams v. District of Columbia*, 902 A.2d 91, 2006 D.C. App. LEXIS 353 (2006).

Limitation in District of Columbia initiative statute prohibiting electors from proposing laws appropriating funds applies to more than Budget Request Act; language of limitation must refer to council's role in District government's budget process. D.C. Code 1981, §§ 1-227(e, f), 1-229(a), 1-233(c), 1-281(a), 1-285, 47-304, 47-313(a). *Hessey v. District of Columbia Bd. of Elections & Ethics*, 601 A.2d 3, 1991 D.C. App. LEXIS 318 (1991).

In general.

By-pass approach permitting allocation of revenues for specific purposes by initiative, but requiring further legislative action in order to appropriate those revenues, is deficient as applied to District of Columbia in which allocation and appropriation functions are divided between Congress and District of Columbia Council. D.C. Code 1981, §§ 1-201(a), 1-227, 1-227(e), 1-229(a), 47-301, 47-301(a)(1, 3-6), 47-313(c, d), 47-304, 47-305, 47-3405. *Hessey v. District of Columbia Bd. of Elections & Ethics*, 601 A.2d 3, 1991 D.C. App. LEXIS 318 (1991).

§ 1-206.04. Congressional action on certain District matters.

(a) This section is enacted by Congress:

(1) As an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such these provisions are deemed a part of the rule of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by this section; and they supersede other rules only to the extent that they are inconsistent therewith; and

(2) With full recognition of the constitutional right of either House to change the rule (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(b) For the purpose of this section, "resolution" means only a joint resolution, the matter after the resolving clause of which is as follows: "That the approves/disapproves of the action of the District of Columbia Council described as follows:", the blank spaces therein being appropriately filled, and either approval or disapproval being appropriately indicated; but does not include a resolution which specifies more than 1 action.

(c) A resolution with respect to Council action shall be referred to the Committee on the District of Columbia of the House of Representatives, or the Committee on the District of Columbia of the Senate, by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

(d) If the Committee to which a resolution has been referred has not reported it at the end of 20 calendar days after its introduction, it is in order to move to discharge the Committee from further consideration of any other resolution with respect to the same Council action which has been referred to the Committee.

(e) A motion to discharge may be made only by an individual favoring the resolution, is highly privileged (except that it may not be made after the Committee has reported a resolution with respect to the same action), and

debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(f) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the Committee be made with respect to any other resolution with respect to the same action.

(g) When the Committee has reported, or has been discharged from further consideration of, a resolution, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(h) Debate on the resolution shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

(i) Motions to postpone made with respect to the discharge from Committee or the consideration of a resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(j) Appeals from the decisions of the chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution shall be decided without debate.

(Dec. 24, 1973, 87 Stat. 816, Pub. L. 93-198, title VI, § 604; Oct. 12, 1984, 98 Stat. 1975, Pub. L. 98-473, § 131(h).)

Section references. — This section is referred to in §§ 1-203.03, 1-204.04, and 1-206.02.

1973 Ed., § 1-127.

Editor's notes. — Fiscal year: See Historical and Statutory Notes following § 1-203.03.

Prior Codifications. — 1981 Ed., § 1-207.

*Subchapter VII. Referendum; Succession in Government;
Temporary Provisions; Miscellaneous; Amendments to District of
Columbia Elections Act; Rules of Construction;
and Effective Dates.*

Part A

CHARTER REFERENDUM.

§ 1-207.01. Referendum.

On a date to be fixed by the Board of Elections, not more than five months after December 24, 1973 a referendum (in this part referred to as the “charter

referendum”) shall be conducted to determine whether the registered qualified electors of the District accept the charter set forth in subchapter IV of this chapter.

(Dec. 24, 1973, 87 Stat. 779, Pub. L. 93-198, title VII, § 701.)

§ 1-207.02. Board of Elections authority.

(a) The Board of Elections shall conduct the charter referendum and certify the results thereof as provided in this part.

(b) Notwithstanding the fact that such section does not otherwise take effect unless the charter is accepted under this subchapter, the applicable provision of part E of this subchapter shall govern the Board of Elections in the performance of its duties under this chapter.

(Dec. 24, 1973, 87 Stat. 779, Pub. L. 93-198, title VII, § 702.)

§ 1-207.03. Referendum ballot and notice of voting.

(a) The charter referendum ballot shall contain the following, with a blank space appropriately filled:

“The District of Columbia Home Rule Act, enacted _____, proposes to establish a charter for the governance of the District of Columbia, but provides that the charter shall take effect only if it is accepted by a majority of the registered qualified voters of the District voting on this issue.

“Indicate in one of the squares provided below whether you are for or against the charter.

☐ For the charter

☐ Against the charter.

“In addition, the Act referred to above authorizes the establishment of advisory neighborhood councils if a majority of the registered qualified voters of the District voting on this issue in this referendum vote for the establishment of such councils.

“Indicate in one of the squares provided below whether you are for or against the establishment of Advisory Neighborhood Councils.

☐ For Advisory Neighborhood Councils

☐ Against Advisory Neighborhood Councils.”

(b) Voting may be by paper ballot or by voting machine. The Board of Elections may make such changes in the second and fourth paragraphs of the charter referendum ballot as it determines to be necessary to permit the use of voting machines if such machines are used.

(c) Not less than five days before the date of the charter referendum, the Board of Elections shall mail to each registered qualified elector (1) a sample of the charter referendum ballot, and (2) information showing the polling place of such elector and the date and hours of voting.

(d) Not less than one day before the charter referendum, the Board of Elections shall publish, in one or more newspapers of general circulation published in the District, a list of the polling places and the date and hours of voting.

(Dec. 24, 1973, 87 Stat. 779, Pub. L. 93-198, title VII, § 703; Apr. 24, 1974, 88 Stat. 93, Pub. L. 93-272, § 1.)

§ 1-207.04. Acceptance or nonacceptance of Charter.

(a) If a majority of the registered qualified electors voting in the charter referendum vote for the charter, the charter shall be considered accepted as of the time the Board of Elections certifies the result of the charter referendum to the President of the United States, as provided in subsection (b) of this section.

(b) The Board of Elections shall, within a reasonable time, but in no event more than thirty days after the date of the charter referendum, certify the result of the charter referendum to the President of the United States and to the Secretary of the Senate and the Clerk of the House of Representatives.

(Dec. 24, 1973, 87 Stat. 779, Pub. L. 93-198, title VII, § 704.)

Editor's notes. — On May 17, 1974, the District of Columbia Board of Elections certified the results of the election of May 7, 1974, where a majority of the registered qualified voters of the District, voting on the issues of the

establishment of the District Charter (subchapter IV of Chapter 2 of Title 1) and the establishment of Advisory Neighborhood Councils, voted in favor of both issues. See 21 DCR 651.

Part B

SUCCESSION IN GOVERNMENT.

§ 1-207.11. Abolishment of existing government and transfer of functions.

The District of Columbia Council, the Offices of Chairman of the District of Columbia Council, Vice Chairman of the District of Columbia Council, and the 7 other members of the District of Columbia Council, and the Offices of the Commissioner of the District of Columbia and Assistant to the Commissioner of the District of Columbia, as established by Reorganization Plan No. 3 of 1967, are abolished as of noon January 2, 1975. This section shall not be construed to reinstate any governmental body or office in the District abolished in said plan or otherwise heretofore.

(Dec. 24, 1973, 87 Stat. 818, Pub. L. 93-198, title VII, § 711.)

Prior Codifications. — 1981 Ed., § 1-211. 1973 Ed., § 1-131.

CASE NOTES

Police power and regulations.

Where under reorganization of government of District of Columbia, a single commissioner was assigned executive functions while council was assigned quasi-legislative functions and, under former law, both functions had been exercised by three-member board of commissioners, statute providing that, in determining

meaning of act, words imparting plural include singular was not applicable to permit prosecution under statute prohibiting receiving money for procuring any office or promotion from the commissioners of District of Columbia. D.C. Code §§ 1-201, 1-211, 1-216, 22-702; 1 U.S.C. § 1. *United States v. Bishton*, 264 A.2d 139, 1970 D.C. App. LEXIS 261 (App. 1970).

Where there was not a single commissioner of District of Columbia as provided by government reorganization when statute was drafted prohibiting receiving money for procuring any office or promotion from commissioners of District of Columbia, defendant could not be pros-

ecuted under the statute which had not been amended to conform to change to single commissioner by the reorganization. D.C. Code §§ 1-201, 1-211, 1-216, 22-702; 1 U.S.C. § 1. United States v. Bishton, 264 A.2d 139, 1970 D.C. App. LEXIS 261 (App. 1970).

§ 1-207.12. Certain delegated functions; functions of certain agencies.

No function of the District of Columbia Council (established under Reorganization Plan No. 3 of 1967) or of the Commissioner of the District of Columbia which such District of Columbia Council or Commissioner has delegated to an officer, employee, or agency (including any body of or under such agency) of the District, nor any function now vested pursuant to § 501 of Reorganization Plan No. 3 of 1967 in the District Public Service Commission, Zoning Advisory Council, Board of Zoning Adjustment, Office of the Recorder of Deeds, or Armory Board, or in any officer, employee, or body of or under such agency, shall be considered as a function transferred to the Council pursuant to § 1-204.04(a). Each such function is hereby transferred to the officer, employee, or agency (including any body of or under such agency), to whom or to which it was delegated, or in whom or in which it has remained vested, until the Mayor or Council established under this chapter, or both, pursuant to the powers herein granted, shall revoke, modify, or transfer such delegation or vesting.

(Dec. 24, 1973, 87 Stat. 818, Pub. L. 93-198, title VII, § 712.)

Prior Codifications. — 1981 Ed., § 1-212. 1973 Ed., § 1-132.

§ 1-207.13. Transfer of personnel, property, and funds.

(a) In each case of the transfer, by any provision of this chapter, of functions to the Council, to the Mayor, or to any agency or officer, there are hereby authorized to be transferred (as of the time of such transfer of functions) to the Council, to the Mayor, to such agency, or to the agency of which such officer is the head, for use in the administration of the functions of the Council or such agency or officer, the personnel (except the Commissioner of the District of Columbia, the Assistant to the Commissioner, the Chairman of the District of Columbia Council, the Vice Chairman of the District of Columbia Council, the other members thereof, all of whose offices are abolished by this chapter), property, records, and unexpended balances of appropriations and other funds which relate primarily to the functions so transferred.

(b) If any question arises in connection with the carrying out of subsection (a) of this section, such questions shall be decided:

(1) In the case of functions transferred from a Federal officer or agency, by the Director of the Office of Management and Budget; and

(2) In the case of other functions (A) by the Council, or in such manner as the Council shall provide, if such functions are transferred to the Council, and

(B) by the Mayor if such functions are transferred to him or to any other officer of agency.

(c) Any of the personnel authorized to be transferred to the Council, the Mayor, or any agency by this section which the Council or the head of such agency shall find to be in excess of the personnel necessary for the administration of its or his function shall, in accordance with law, be retransferred to other positions in the District or Federal Government or be separated from the service.

(d) No officer or employee shall, by reason of his transfer to the District government under this chapter or his separation from service under this chapter, be deprived of any civil service rights, benefits, and privileges held by him prior to such transfer or any right of appeal or review he may have by reason of his separation from service.

(Dec. 24, 1973, 87 Stat. 818, Pub. L. 93-198, title VII, § 713.)

Prior Codifications. — 1981 Ed., § 1-212.1. 1973 Ed., § 1-131 note.

§ 1-207.14. Existing statutes, regulations, and other actions.

(a) Any statute, regulation, or other action in respect of (and any regulation or other action issued, made, taken, or granted by) any officer or agency from which any function is transferred by this chapter shall, except to the extent modified or made inapplicable by or under authority of law, continue in effect as if such transfer had not been made; but after such transfer, references in such statute, regulation, or other action to an officer or agency from which a transfer is made by this chapter shall be held and considered to refer to the officer or agency to which the transfer is made.

(b) As used in subsection (a) of this section, the term “other action” includes, without limitation, any rule, order, contract, compact, policy, determination, directive, grant, authorization, permit, requirement, or designation.

(c) Unless otherwise specifically provided in this chapter, nothing contained in this chapter shall be construed as affecting the applicability to the District government of personnel legislation relating to the District government until such time as the Council may otherwise elect to provide equal or equivalent coverage.

(Dec. 24, 1973, 87 Stat. 819, Pub. L. 93-198, title VII, § 714.)

Section references. — This section is referred to in § 1-204.22, 1-207.71, and 1-601.01.

Prior Codifications. — 1981 Ed., § 1-213. 1973 Ed., § 1-133.

CASE NOTES

ANALYSIS

Comprehensive Merit Personnel Act.
Federal Back Pay Act.

Comprehensive Merit Personnel Act.

Comprehensive Merit Personnel Act (CMPA) was intended to provide district employees with their exclusive remedies for claims arising out

of employer conduct in handling personnel ratings, employee grievances and adverse actions, and thus precluded litigation of former employee's emotional distress and defamation claims in the Superior Court in the first instance. D.C. Code 1981, §§ 1-213(c), 1-242(3), 1-615.1 to 1-615.5, 1-617.1 to 1-617.3, 1-637.1; 5 U.S.C. §§ 1101 et seq., 8101-8193. *District of Columbia v. Thompson*, 593 A.2d 621, 1991 D.C. App. LEXIS 172 (1991), writ of certiorari denied by 502 U.S. 942, 112 S. Ct. 380, 116 L. Ed. 2d 331, 1991 U.S. LEXIS 6258, 60 U.S.L.W. 3342 (1991).

Comprehensive Merit Personnel Act (CMPA) provisions that govern performance ratings, adverse actions and grievances do not provide they are exclusive and preclude common-law claims. D.C. Code 1981, §§ 1-213(c), 1-242(3), 1-615.1 to 1-615.5, 1-617.1 to 1-617.3, 1-637.1. *District of Columbia v. Thompson*, 593 A.2d

621, 1991 D.C. App. LEXIS 172 (1991), writ of certiorari denied by 502 U.S. 942, 112 S. Ct. 380, 116 L. Ed. 2d 331, 1991 U.S. LEXIS 6258, 60 U.S.L.W. 3342 (1991).

Federal Back Pay Act.

Amendment to Federal Back Pay Act (FBPA), which provided interest on back pay awards, did not entitle a pre-1980 District of Columbia employee to interest on his back pay award; the Home Rule Act and Comprehensive Merit Personnel Act (CMPA) guaranteed pre-1980 District employees only those rights to which they were entitled immediately prior to 1980, and interest on back pay awards under the FBPA was not one of those rights. 5 U.S.C. § 5596(b)(2)(a); D.C. Code 1981, §§ 1-201 et seq., 1-601 et seq. *District of Columbia v. Brown*, 739 A.2d 832, 1999 D.C. App. LEXIS 255 (1999).

§ 1-207.15. Pending actions and proceedings.

(a) No suit, action, or other judicial proceeding lawfully commenced by or against any officer or agency in his or its official capacity or in relation to the exercise of his or its official functions, shall abate by reason of the taking effect of any provision of this chapter; but the court, unless it determines that the survival of such suit, action, or other proceedings is not necessary for purposes of settlement of the questions involved, shall allow the same to be maintained, with such substitutions as to parties as are appropriate.

(b) No administrative action or proceeding lawfully commenced shall abate solely by reason of the taking effect of any provision of this chapter, but such action or proceeding shall be continued with such substitutions as to parties and officers or agencies as are appropriate.

(Dec. 24, 1973, 87 Stat. 779, Pub. L. 93-198, title VII, § 715.)

§ 1-207.16. Vacancies resulting from abolishment of offices of Commissioner and Assistant to the Commissioner.

Until the 1st day of July next after the first Mayor takes office under this chapter no vacancy occurring in any District agency by reason of § 1-207.11, abolishing the offices of Commissioner of the District of Columbia and Assistant to the Commissioner, shall affect the power of the remaining members of such agency to exercise its functions; but such agency may take action only if a majority of the members holding office vote in favor of it.

(Dec. 24, 1973, 87 Stat. 779, Pub. L. 93-198, title VII, § 716.)

§ 1-207.17. Status of the District.

(a) All of the territory constituting the permanent seat of the Government of the United States shall continue to be designated as the District of Columbia.

The District of Columbia shall remain and continue a body corporate, as provided in § 1-102. Said Corporation shall continue to be charged with all the duties, obligations, responsibilities, and liabilities, and to be vested with all of the powers, rights, privileges, immunities, and assets, respectively, imposed upon and vested in said Corporation or the Commissioner.

(b) No law or regulation which is in force on January 2, 1975 shall be deemed amended or repealed by this chapter except to the extent specifically provided herein or to the extent that such law or regulation is inconsistent with this chapter, but any such law or regulation may be amended or repealed by act or resolution as authorized in this chapter, or by Act of Congress, except that, notwithstanding the provisions of § 1-207.52, such authority to repeal shall not be construed as authorizing the Council to repeal or otherwise alter, by amendment or otherwise, any provision of subchapter III of chapter 73 of title 5, United States Code in whole or in part.

(c) Nothing contained in this section shall affect the boundary line between the District of Columbia and the Commonwealth of Virginia as the same was established or may be subsequently established under the provisions of title I of the Act of October 31, 1945 (59 Stat. 552).

(Dec. 24, 1973, 87 Stat. 779, Pub. L. 93-198, title VII, § 717.)

Prior Codifications. — 1981 Ed., §§ 1-101(b), 1-102(b).

CASE NOTES

ANALYSIS

Applicability of local law.
Boundaries.
Jurisdiction.
Operation and effect of cessions.
Riparian and littoral rights.
Washington National Airport.

Applicability of local law.

The entire part of the Potomac river between the District of Columbia and the Virginia shores is a part of the district, and as such is subject to all local legislation and police regulations of the district, unless there is a clear intent to exclude it therefrom. *Jefferson v. District of Columbia*, 40 App.D.C. 381, 1913 U.S. App. LEXIS 2087 (1913).

The fact that a boat or vessel is engaged in interstate commerce does not prevent the application to it of the laws of the District of Columbia regulating the sale of intoxicating liquors, and it is immaterial whether there is any provision of law for the granting of licenses to sell such liquors on that portion of the Potomac river which is within the limits of the district. *Jefferson v. District of Columbia*, 40 App.D.C. 381, 1913 U.S. App. LEXIS 2087 (1913).

Statutes regulating the sale of intoxicating liquors in the District of Columbia, extend to

that part of the Potomac river which is within the territorial limits of the district. *Jefferson v. District of Columbia*, 40 App.D.C. 381, 1913 U.S. App. LEXIS 2087 (1913).

Boundaries.

The arbitration of the question of boundary between Maryland and Virginia ending in an award in 1878, though assented to by the United States by Act March 3, 1879 (20 Stat. 481), is not conclusive as to the boundary between Virginia and the District of Columbia, as that question was not and could not be adjudicated. *Marine Ry. & Coal Co. v. U.S.*, 42 S.Ct. 32, 1921 U.S. LEXIS 1313 (U.S. Dist. Col. 1921).

Under the Maryland Charter of 1632 and the Howsing grant of 1669 from the Governor of Virginia, the boundary between Virginia and the District of Columbia follows the low-water line on the Virginia side of the Potomac river, and is not drawn from headland to headland, so as to leave indentations or coves in Virginia. *Marine Ry. & Coal Co. v. U.S.*, 42 S.Ct. 32, 1921 U.S. LEXIS 1313 (U.S. Dist. Col. 1921).

The compact of 1785 between Virginia and Maryland, providing that the Potomac river should be considered a common highway for citizens of both states, and that citizens of each state should have full property in the shores, the privilege of carrying out wharves, etc., if

ever in force in the District of Columbia, left the question of boundary open. *Marine Ry. & Coal Co. v. U.S.*, 42 S.Ct. 32, 1921 U.S. LEXIS 1313 (U.S. Dist. Col. 1921).

The boundary line between the District of Columbia and Virginia is the high-water mark of the Potomac river on the Virginia shore. *Herald v. U.S.*, 284 F. 927, 1922 U.S. App. LEXIS 2485 (1922).

The boundary of the District of Columbia, as originally fixed, was not affected by the litigation between Maryland and West Virginia. *Herald v. U.S.*, 284 F. 927, 1922 U.S. App. LEXIS 2485 (1922).

This court will take cognizance of the fact that the county of Washington embraces all that portion of the original District of Columbia acquired from the state of Maryland and lying north of the Potomac river. *Green v. McIntire*, 42 App. D.C. 250, 1914 U.S. App. LEXIS 2266 (1914).

Jurisdiction.

For purpose of section of 1912 Act directing the Attorney General of the United States to institute suit in the Supreme Court of the District of Columbia to establish title of United States to submerged and fast lands along the Potomac River within the boundaries of the district as it then existed, fact that no one could precisely locate the 1791 line did not mean that the district court for the District of Columbia did not have subject matter jurisdiction to adjudicate title to lands along the Alexandria waterfront. Act April 27, 1912, § 1 et seq., 37 Stat. 93. *United States v. Herbert Bryant, Inc.*, 543 F.2d 299, 1976 U.S. App. LEXIS 8171 (C.A.D.C. 1976), writ of certiorari denied by 429 U.S. 1091, 97 S. Ct. 1100, 51 L. Ed. 2d 536, 1977 U.S. LEXIS 652 (1977).

The common-law doctrines of accretion and erosion were legislatively overruled by the Acts of 1912 and 1945 insofar as concerns jurisdiction of the United States District Court for the District of Columbia to adjudicate title to lands lying along the Alexandria waterfront. Act April 27, 1912, § 1 et seq., 37 Stat. 93; Act October 31, 1945, §§ 101-103, D.C. Code § 1-101 note. *United States v. Herbert Bryant, Inc.*, 543 F.2d 299, 1976 U.S. App. LEXIS 8171 (C.A.D.C. 1976), writ of certiorari denied by 429 U.S. 1091, 97 S. Ct. 1100, 51 L. Ed. 2d 536, 1977 U.S. LEXIS 652 (1977).

Sections of 1945 Act establishing new boundary between the District of Columbia and Virginia for law enforcement purposes and ceding to Virginia sovereignty and concurrent jurisdiction with the United States over area between 1791 high watermark and the newly established pierhead line did not establish a jurisdictional boundary between the District of Columbia and Virginia for all purposes, and by virtue of section providing that nothing in the Act was

to be construed as limiting jurisdiction of courts of United States for the District of Columbia to hear and determine suits to establish title of United States, United States district court for the District of Columbia had jurisdiction to adjudicate title to lands along the Alexandria waterfront. Act October 31, 1945, §§ 101-103, D.C. Code § 1-101 note. *United States v. Herbert Bryant, Inc.*, 543 F.2d 299, 1976 U.S. App. LEXIS 8171 (C.A.D.C. 1976), writ of certiorari denied by 429 U.S. 1091, 97 S. Ct. 1100, 51 L. Ed. 2d 536, 1977 U.S. LEXIS 652 (1977).

So long as there is a genuine dispute over title or location of present-day boundaries between the District of Columbia and Virginia, the district court for the District of Columbia has, by virtue of the 1912 Act directing the attorney general of the United States to institute suits in the Supreme Court of the District of Columbia to establish title of United States to submerged and fast lands along the Potomac River within the boundaries of the District of Columbia as it then existed, exclusive subject matter jurisdiction over government-initiated quiet title actions involving Alexandria waterfront property. Act April 27, 1912, § 1 et seq., 37 Stat. 93. *United States v. Herbert Bryant, Inc.*, 543 F.2d 299, 1976 U.S. App. LEXIS 8171 (C.A.D.C. 1976), writ of certiorari denied by 429 U.S. 1091, 97 S. Ct. 1100, 51 L. Ed. 2d 536, 1977 U.S. LEXIS 652 (1977).

Operation and effect of cessions.

Under the Maryland Charter of June 30, 1632, the Virginia Charter, and the Howsling grant of 1669 from the Governor of Virginia, the original title of the state of Maryland extended to low-water mark on the Virginia side of the Potomac river, and the rights of Virginia were not enlarged by its grant to the United States and the regrant to it of the Virginia side of the District of Columbia. *Marine Ry. & Coal Co. v. U.S.*, 42 S.Ct. 32, 1921 U.S. LEXIS 1313 (U.S. Dist. Col. 1921).

The compact between Maryland and Virginia, entered into in 1785, concerning the right of citizens of Virginia to fish in the Potomac river, was abrogated by the cession of that portion of the District of Columbia originally granted by the state of Virginia and by its recession by the United States. *Herald v. U.S.*, 284 F. 927, 1922 U.S. App. LEXIS 2485 (1922).

Riparian and littoral rights.

That the filling in of land below low-water mark on the Virginia side of the Potomac river by the government interrupts the adjoining owner's previously existing access to the water front does not affect the government's right to the possession of the land, whatever rights the adjoining owners may have. *Marine Ry. & Coal Co. v. U.S.*, 42 S.Ct. 32, 1921 U.S. LEXIS 1313 (U.S. Dist. Col. 1921).

Washington National Airport.

In consolidated actions arising out of air-

plane crash in Washington, D.C., federal subject-matter jurisdiction arose from parties' diversity of citizenship and, therefore, district court was required to follow choice of law rules of states in which various actions were originally filed. 28 U.S.C. § 1404(a). In *re Air Crash Disaster at Washington*, 559 F. Supp. 333, 1983 U.S. Dist. LEXIS 18834 (1982).

In determining which jurisdiction's law applied to allegations of product liability against airplane manufacturer arising out of airplane crash in District of Columbia, contacts to be considered included site of injury, place where conduct occurred, parties' domiciles and place where parties' relationship was centered. In *re Air Crash Disaster at Washington*, 559 F. Supp. 333, 1983 U.S. Dist. LEXIS 18834 (1982).

In consolidated actions arising out of airplane crash in Washington, D.C., comparative fault rule of Florida, Texas and Washington, which were principal places of business of airline, airline which performed deicing of airplane's wings and manufacturer, would be applied rather than District of Columbia's or Virginia's equal fault rule to serve purpose of ensuring that parties act in conformance with standard of due care. Fla. Stat. § 768.31(3)(a); Rev. Code Wash. (ARCW) 4.22.040(1); Tex. Civ. Prac. & Rem. Code art. 2212a, § 2. In *re Air Crash Disaster at Washington*, 559 F. Supp. 333, 1983 U.S. Dist. LEXIS 18834 (1982).

Where highest court of Virginia recently reaffirmed its adherence to *lex loci delicti* rule, District of Columbia law governed all issues in action transferred from Virginia to District of Columbia when actions arising out of airplane crash in Washington, D.C., were consolidated. In *re Air Crash Disaster at Washington*, 559 F. Supp. 333, 1983 U.S. Dist. LEXIS 18834 (1982).

In consolidated actions arising out of airplane crash in Washington, D.C., Georgia's comparative fault rule for contribution among tort-feasors was applicable to those claims transferred from Georgia to District of Columbia; but all other issues were to be determined by law of District of Columbia. Ga. Code, § 105-2011. In *re Air Crash Disaster at Washington*, 559 F. Supp. 333, 1983 U.S. Dist. LEXIS 18834 (1982).

In consolidated actions arising out of airplane crash in Washington, D.C., District of Columbia law governed allegations of products liability against airplane manufacturer in that interest of Washington State as manufacturer's principal place of business with regard to question of manufacturer's alleged products liability was not as great as interest of District of Columbia. In *re Air Crash Disaster at Washington*, 559 F. Supp. 333, 1983 U.S. Dist. LEXIS 18834 (1982).

In consolidated actions arising out of airplane crash in Washington, D.C., Pennsylvania law permitting award of punitive damages

would not be applied to that action which had been transferred from Pennsylvania to District of Columbia because Pennsylvania would not be interested in imposition of punitive damages in case involving out-of-state air crash. In *re Air Crash Disaster at Washington*, 559 F. Supp. 333, 1983 U.S. Dist. LEXIS 18834 (1982).

In consolidated actions arising out of airplane crash in Washington, D.C., Massachusetts law governing punitive damages which provides for mandatory minimum of \$5,000 assessment of punitive damages where defendant is found to have acted maliciously, willfully, wantonly or recklessly, or to have been grossly negligent, would not be given extraterritorial effect to apply to claims of Massachusetts plaintiffs. M.G.L.A. c. 229, § 2. In *re Air Crash Disaster at Washington*, 559 F. Supp. 333, 1983 U.S. Dist. LEXIS 18834 (1982).

In consolidated actions arising out of airplane crash in Washington, D.C., punitive damages law of state in which airline had principal place of business and state in which airline which performed deicing of airplane's wings had its principal place of business would not be applied in that allegedly tortious conduct occurred in neither of those states and states in which conduct occurred had greater interest in deterring conduct. In *re Air Crash Disaster at Washington*, 559 F. Supp. 333, 1983 U.S. Dist. LEXIS 18834 (1982).

In consolidated actions arising out of airplane crash in Washington, D.C., District of Columbia law controlled question of liability of airline and of airline which deiced airplane's wings for punitive damages, even though airport was located in Virginia. In *re Air Crash Disaster at Washington*, 559 F. Supp. 333, 1983 U.S. Dist. LEXIS 18834 (1982).

Law of District of Columbia permitting assessment of punitive damages was applicable to allegations of product liability against manufacturer of airplane which crashed on takeoff in Washington, D.C., even though Washington State made a considered choice not to allow assessment of punitive damages, given District of Columbia's significant interests and fact that manufacturer had more substantial relationship with District of Columbia than manufacturer generally has to site of injury in typical "fortuitous crash" cases. In *re Air Crash Disaster at Washington*, 559 F. Supp. 333, 1983 U.S. Dist. LEXIS 18834 (1982).

Fact that mailing address of airport, which was base of operations of unemployment compensation claimant, was Washington, D.C., did not make the airport within confines of the District so as to give the District Unemployment Compensation Board jurisdiction over the claim. D.C. Code §§ 1-101, 46-301(b)(4). *Bryan v. District Unemployment Compensation Board*, 342 A.2d 45, 1975 D.C. App. LEXIS 421 (1975).

That jurisdiction over airport, situated within boundaries of Virginia, was in the United States did not give the District of Columbia Unemployment Compensation Board jurisdiction over pilot's unemployment compensation claim on theory that the airport was a federal reservation adjacent to the District of Columbia and thus not within the Commonwealth of Virginia. D.C. Code §§ 1-101, 46-301(b)(4). *Bryan v. District Unemployment Compensation Board*, 342 A.2d 45, 1975 D.C. App. LEXIS 421 (1975).

Washington National Airport was within boundaries of Commonwealth of Virginia and not within those of District of Columbia; thus employer of pilot, whose base of operations was the airport, correctly reported pilot's wages to Virginia for unemployment compensation purposes and pilot was not entitled to unemployment benefits from the District of Columbia. D.C. Code §§ 1-101, 46-301(b)(4). *Bryan v. District Unemployment Compensation Board*, 342 A.2d 45, 1975 D.C. App. LEXIS 421 (1975).

§ 1-207.18. Continuation of District of Columbia court system.

(a) The District of Columbia Court of Appeals, the Superior Court of the District of Columbia, and the District of Columbia Commission on Judicial Disabilities and Tenure shall continue as provided under the District of Columbia Court Reorganization Act of 1970 subject to the provisions of part C of subchapter IV of this chapter and § 1-206.02(a)(4).

(b) The term and qualifications of any judge of any District of Columbia court, and the term and qualifications of any member of the District of Columbia Commission on Judicial Disabilities and Tenure appointed prior to the effective date of subchapter IV of this chapter shall not be affected by the provisions of part C of subchapter IV of this chapter. No provision of this chapter shall be construed to extend the term of any such judge or member of such Commission. Judges of the District of Columbia courts and members of the District of Columbia Commission on Judicial Disabilities and Tenure appointed after the effective date of subchapter IV of this chapter shall be appointed according to part C of such subchapter IV.

(c) Nothing in this chapter shall be construed to amend, repeal, or diminish the duties, rights, privileges, or benefits accruing under §§ 11-1561 through 11-1571 and §§ 11-703 and 11-904, dealing with the retirement and compensation of the judges of the District of Columbia courts.

(Dec. 24, 1973, 87 Stat. 820, Pub. L. 93-198, title VII, § 718.)

Prior Codifications. — 1981 Ed., Title 11, appx., § 718. 1973 Ed., Title 11, appx., § 718.

§ 1-207.19. Continuation of the Board of Education.

The term of any member elected to the District of Columbia Board of Education, and the powers and duties of the Board of Education shall not be affected by the provisions of § 1-204.95 [repealed]. No provision of such section shall be construed to extend the term of any such member or to terminate the term of any such member.

(Dec. 24, 1973, 87 Stat. 779, Pub. L. 93-198, title VII, § 719.)

Part C

TEMPORARY PROVISIONS.

§ 1-207.21. Powers of the President during transitional period.

The President of the United States is hereby authorized and requested to take such action during the period following the date of the enactment of this chapter and ending on the date of the first meeting of the Council, by Executive Order or otherwise, with respect to the administration of the functions of the District government, as he deems necessary to enable the Board of Elections properly to perform its function under this chapter.

(Dec. 24, 1973, 87 Stat. 779, Pub. L. 93-198, title VII, § 721.)

§ 1-207.22. Reimbursable appropriations for the District.

(a) The Secretary of the Treasury is authorized to advance to the District of Columbia the sum of \$750,000, out of any money in the Treasury not otherwise appropriated, for use (1) in the paying the expenses of the Board of Education (including compensation of the members thereof), and (2) in otherwise carrying into effect the provisions of this chapter.

(b) The full amount expended out of the money advanced pursuant to this section shall be reimbursed to the United States, without interest, during the second fiscal year which begins after January 2, 1975, from the general fund of the District.

(Dec. 24, 1973, 87 Stat. 779, Pub. L. 93-198, title VII, § 722.)

§ 1-207.23. Interim loan authority.

(a) The Mayor is authorized to accept loans for the District from the Treasury of the United States, and the Secretary is authorized to lend to the Mayor, such sums as the Mayor may determine are required to complete capital projects for which construction and construction services funds have been authorized or appropriated, as the case may be, by Congress prior to October 1, 1983, or the date of the enactment of the appropriation act for the fiscal year ending September 30, 1984, for the government of the District of Columbia, whichever is later. In addition, such loans may include funds to pay the District's share of the cost of the adopted regional system specified in the National Capital Transportation Act of 1969.

(b) Loans advanced pursuant to this section during any six-month period shall be at a rate of interest determined by the Secretary as of the beginning of such period, which, in his judgment, would reflect the cost of money to the Treasury for borrowing at a maturity approximately equal to the period of time the loan is outstanding.

(c) Subject to the limitations contained in § 1-206.03(b), there is authorized to be appropriated to make loans under this section the sum of \$155,000,000

for the fiscal year ending September 30, 1982, the sum of \$155,000,000 for the fiscal year ending on September 30, 1983, and the sum of \$155,000,000 for the fiscal year ending on September 30, 1984.

(d) The authority contained in this section to make loans shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriations acts.

(Dec. 24, 1973, 87 Stat. 779, Pub. L. 93-198, title VII, § 723. Amended, Oct. 13, 1977, 91 Stat. 1155, Pub. L. 95-131, § 1.)

§ 1-207.24. Political participation in certain elections first held under this chapter.

(a) In order to provide continuity in the government of the District of Columbia during the transition from the appointed government to the elected government provided for under this chapter, no person employed by the United States or by the government of the District of Columbia shall be prohibited by reason of such employment:

(1) From being a candidate in the first primary election and general election held under this chapter for the office of Mayor or Chairman or member of the Council of the District of Columbia provided for under subchapter IV; and

(2) If such a candidate, from taking an active part in political management or political campaigns in any election referred to in paragraph (1) of this subsection.

(b) Such candidacy shall be deemed to have commenced on the day such person obtains from the Board of Elections an official nominating petition with his name stamped thereon, and shall terminate:

(1) In the case of such candidate who ceases to be eligible as a nominee for the office with respect to which such petition was obtained by reason of his inability or failure to qualify as a bona fide nominee prior to the expiration of the final date for filing such petition under the election laws of the District of Columbia, on the day following such expiration date;

(2) In the case of such candidate who is elected to any such office with respect to which such nominating petition was obtained, on the day such candidate takes office following the election held with respect thereto;

(3) In the case of such candidate who is defeated in a primary election held to nominate candidates for the office with respect to which such nominating petition was obtained, on the expiration of the thirty-day period following the date of such primary election; and

(4) In the case of such candidate who fails to be elected in a general election to any such office with respect to which such nominating petition was obtained, on the expiration of the thirty-day period following the date of such election.

(c) The provisions of this section shall terminate as of January 2, 1975

(Dec. 24, 1973, 87 Stat. 779, Pub. L. 93-198, title VII, § 724, as added, April 17, 1974, 88 Stat. 85, Pub. L. 93-268, § 3.)

Part D
MISCELLANEOUS.

§ 1-207.31. Services between United States government and District government.

(a) To prevent duplication and to promote efficiency and economy, an officer or employee of:

(1) The United States government may provide services to the District of Columbia government; and

(2) The District of Columbia government may provide services to the United States government.

(b)(1) Services under this section shall be provided under an agreement:

(A) Negotiated by officers and employees of the 2 governments; and

(B) Approved by the Director of the Office of Management and Budget and the Mayor of the District of Columbia.

(2) Each agreement shall provide that the cost of providing the services shall be borne in the way provided in subsection (c) of this section by the government to which the services are provided at rates or charges based on the actual cost of providing the services.

(3) To carry out an agreement made under this subsection, the agreement may provide for the delegation of duties and powers of officers and employees of:

(A) The District of Columbia government to officers and employees of the United States government; and

(B) The United States government to officers and employees of the District of Columbia government.

(c) In providing services under an agreement made under subsection (b) of this section:

(1) Costs incurred by the United States government may be paid from appropriations available to the District of Columbia government officer or employee to whom the services were provided; and

(2) Costs incurred by the District of Columbia government may be paid from amounts available to the United States government officer or employee to whom the services were provided.

(d) When requested by the Director of the United States Secret Service Division, the Chief of the Metropolitan Police shall assist the Secret Service and the United States Secret Service Uniformed Division on a non-reimbursable basis in carrying out their protective duties under § 202 of Title 3 of the United States Code and § 3056 of Title 18 of the United States Code.

(Dec. 24, 1973, 87 Stat. 822, Pub. L. 93-198, title VII, § 731; Sept. 13, 1982, 96 Stat. 934, Pub. L. 97-258, § 1 Chapter 15, subchapter III, § 1537, 4(a), and § 5(b).)

Cross references. — District of Columbia administration, personnel management, reciprocal agreements for use of equipment, materials, facilities, and services, see § 1-628.01.

Prior Codifications. — 1981 Ed., §§ 1-1131, 1-1131.1. 1973 Ed., § 1-826.

CASE NOTES

In general.

Provision of the Home Rule Act that provides for work-sharing agreements with the United States afforded no basis for claim of federal employment status by employees of the District of Columbia Department of Corrections, notwithstanding that some federal prisoners are

committed to District of Columbia prisons; provision neither states nor implies that District government employees who provide services to the United States government have federal personnel and retirement rights. *Lucas v. United States*, 268 F.3d 1089, 2001 U.S. App. LEXIS 23589 (C.A.D.C. 2001).

§ 1-207.32. Personal interest in contracts or transactions.

Any officer or employee of the District who is convicted of a violation of § 208 of Title 18, United States Code, shall forfeit his office or position.

(Dec. 24, 1973, 87 Stat. 822, Pub. L. 93-198, title VII, § 732.)

Prior Codifications. — 1981 Ed., § 1-1133. 1973 Ed., § 1-828.

§ 1-207.33. Compensation from more than one source.

(a) Except as provided in this chapter, no person shall be ineligible to serve or to receive compensation as a member of the Board of Elections because he occupies another office or position or because he receives compensation (including retirement compensation) from another source.

(b) The right to another office or position or to compensation from another source otherwise secured to such a person under the laws of the United States shall not be abridged by the fact of his service or receipt of compensation as a member of such Board, if such service does not interfere with the discharge of his duties in such other office or position.

(Dec. 24, 1973, 87 Stat. 822, Pub. L. 93-198, title VII, § 733; Aug. 14, 1974, 88 Stat. 458, Pub. L. 93-376, title III, § 306(a).)

Section references. — This section is referred to in § 1-636.02.

Prior Codifications. — 1981 Ed., § 1-1305. 1973 Ed., § 1-1104a.

Legislative history of Law 4-88. — For legislative history of D.C. Law 4-88, see Historical and Statutory Notes following § 1-1001.01.

§ 1-207.34. Assistance of the United States Civil Service Commission in development of District merit system.

The United States Civil Service Commission is hereby authorized to advise and assist the Mayor and the Council in the further development of the merit system or systems required by § 1-204.22(3) and the said Commission is authorized to enter into agreements with the District government to make available its registers of eligibles as a recruiting source to fill District positions

as needed. The costs of any specific services furnished by the Civil Service Commission may be compensated for under the provisions of § 1-207.31.

(Dec. 24, 1973, 87 Stat. 823, Pub. L. 93-198, title VII, § 734.)

Prior Codifications. — 1981 Ed., § 1-515.
1973 Ed., § 1-322.

Present provisions similar to repealed § 1-207.31 are codified at 31 U.S.C. § 1537.

References in text. — “§ 1-1131 (§ 1-207.31, 2001 Ed.)”, referred to at the end of the last sentence of this section, was repealed by § 5(b) of the Act of September 13, 1982, Pub. L. 97-258.

Editor's notes. — Definitions applicable: The definitions contained in § 1-201.03 apply to this section.

§ 1-207.35. Revenue sharing restrictions amendment [Omitted].

Editor's notes. — The text of § 1-207.35 is omitted because the corresponding text of section 735 of Public Law 93-198 amended another law.

§ 1-207.36. Independent audit.

(a) In addition to the audit carried out under § 1-204.55, the Comptroller General each year shall audit the accounts and operations of the District of Columbia government. An audit shall be carried out according to principles, under regulations, and in a way the Comptroller General prescribes. When prescribing the procedures to follow and the extent of the inspection of records, the Comptroller General shall consider generally accepted principles of auditing, including the effectiveness of accounting organizations and systems, internal audit and control, and related administrative practices.

(b) The Comptroller General shall submit each audit report to Congress and (other than the audit reports of the District of Columbia Courts) the Mayor and Council of the District of Columbia. The report shall include the scope of an audit, information the Comptroller General considers necessary to keep Congress, the Mayor, and the Council informed of operations audited, and recommendations the Comptroller General considers advisable.

(c)(1) By the 90th day after receiving an audit report from the Comptroller General, the Mayor shall state in writing to the Council measures the District of Columbia government is taking to comply with the recommendations of the Comptroller General. A copy of the statement shall be sent to Congress.

(2) After the Council receives the statement of the Mayor, the Council may make available for public inspection the report of the Comptroller General and other material the Council considers pertinent.

(d) To carry out this section, records and property of or used by the District of Columbia government necessary to make an audit easier shall be made available to the Comptroller General. The Mayor shall provide facilities to carry out an audit.

(Dec. 24, 1973, 87 Stat. 822, Pub. L. 93-198, title VII, § 736; Sept. 13, 1982, 96 Stat. 934, Pub. L. 97-258, § 1, 4(a), and 5(b).)

Prior Codifications. — 1981 Ed., § 47-118.1.

§ 1-207.37. Adjustments.

(a) Subject to 31 U.S.C. § 1537, the Mayor, with the approval of the Council, and the Director of the Office of Management and Budget, is authorized and empowered to enter into an agreement or agreements concerning the manner and method by which amounts owed by the District to the United States, or by the United States to the District, shall be ascertained and paid.

(b) The United States shall reimburse the District for necessary expenses incurred by the District in connection with assemblages, marches, and other demonstrations in the District which relate primarily to the federal government. The manner and method of ascertaining and paying the amounts needed to so reimburse the District shall be determined by agreement entered into in accordance with subsection (a) of this section.

(c) Each officer and employee of the District required to do so by the Council shall provide a bond with such surety and in such amount as the Council may require. The premiums for all such bonds shall be paid out of appropriations for the District.

(Dec. 24, 1973, 87 Stat. 824, Pub. L. 93-198, title VII, § 737; Apr. 12, 2000, D.C. Law 13-91, § 116, 47 DCR 520.)

Prior Codifications. — 1981 Ed., §§ 1-302, 1-1132, in subsec. (a), substituted “31 U.S.C. § 1537” for “§ 1-1131.1”.

1973 Ed., §§ 1-213c, 1-827.

Effect of amendments. — D.C. Law 13-91,

Legislative history of Law 13-91. — For Law 13-91, see notes following § 2-201.01.

§ 1-207.38. Advisory neighborhood commissions.

(a) The Council shall by act divide the District into neighborhood commission areas and, upon receiving a petition signed by at least 5 per centum of the registered qualified electors of a Neighborhood Commission area, shall establish for that neighborhood an elected Advisory Neighborhood Commission. In designating such neighborhoods, the Council shall consider natural geographic boundaries, election districts, and divisions of the District made for the purpose of administration of services.

(b) Elections for members of each Advisory Neighborhood Commission shall be nonpartisan, and shall be administered by the Board of Elections and Ethics. Advisory Neighborhood Commission members shall be elected from single-member districts within each neighborhood commission area by the registered qualified electors of such district.

(c) Each Advisory Neighborhood Commission:

(1) May advise the District government on matters of public policy including decisions regarding planning, streets, recreation, social services programs, health, safety, and sanitation in that neighborhood commission area;

(2) May employ staff and expend, for public purposes within its neighborhood commission area, public funds and other funds donated to it; and

(3) Shall have such other powers and duties as may be provided by act of the Council.

(d) In the manner provided by act of the Council, in addition to any other notice required by law, timely notice shall be given to each Advisory Neighborhood Commission of requested or proposed zoning changes, variances, public improvements, licenses, or permits of significance to neighborhood planning and development within its neighborhood commission area for its review, comment, and recommendation.

(e) In order to pay the expenses of the Advisory Neighborhood Commissions, enable them to employ such staff as may be necessary, and to conduct programs for the welfare of the people in a neighborhood commission area, the District government shall allot funds to the Advisory Neighborhood Commissions out of the general revenues of the District. The funding apportioned to each Advisory Neighborhood Commission shall bear the same ratio to the full sum allotted as the population of the neighborhood bears to the population of the District. The Council may authorize additional methods of financing Advisory Neighborhood Commissions.

(f) The Council shall by act make provisions for the handling of funds and accounts by each Advisory Neighborhood Commission and shall establish guidelines with respect to the employment of persons by each Advisory Neighborhood Commission, which shall include fixing the status of such employees with respect to the District government, but all such provisions and guidelines shall be uniform for all Advisory Neighborhood Commissions and shall provide that decisions to employ and discharge employees shall be made by the Advisory Neighborhood Commission. These provisions shall conform to the extent practicable to the regular budgetary, expenditure and auditing procedures and the personnel merit system of the District.

(g) The Council shall have authority, in accordance with the provisions of this chapter, to legislate with respect to the Advisory Neighborhood Commissions established in this section.

(h) The foregoing provisions of this section shall take effect only if agreed to in accordance with the provisions of § 1-207.03(a).

(Dec. 24, 1973, 87 Stat. 824, Pub. L. 93-198, title VII, § 738; Aug. 14, 1974, 88 Stat. 458, Pub. L. 93-376, title III, § 306(a); Oct. 30, 1975, D.C. Law 1-27, § 2, 22 DCR 2470; Sept. 27, 1983, D.C. Law 5-26, § 2, 30 DCR 3654; Sept. 26, 1984, D.C. Law 5-116, § 4, 31 DCR 4018; Sept. 26, 1995, D.C. Law 11-52, § 814, 42 DCR 3684; Apr. 20, 1999, D.C. Law 12-264, § 3, 46 DCR 2118.)

Cross references. — Lobby registration, exemptions for public officials, see § 1-1105.03.

Section references. — This section is referred to in §§ 1-309.01, 1-309.13, and 25-101.

Prior Codifications. — 1981 Ed., § 1-251. 1973 Ed., § 1-171.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 801 of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

Emergency legislation. — For temporary (90 day) addition of section, see § 2 of One City Service and Response Training Emergency Act of 2011 (D.C. Act 19-16, February 15, 2011, 58 DCR 1534).

Legislative history of Law 1-27. — Law 1-27 was introduced in Council and assigned Bill No. 1-90, which was referred to the Committee on Advisory Neighborhood Councils. The Bill was adopted on first and second readings on June 17, 1975 and July 1, 1975, respectively. Signed by the Mayor on August 4, 1975, it was

assigned Act No. 1-39 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-26. — Law 5-26 was introduced in Council and assigned Bill No. 5-107, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 7, 1983 and June 21, 1983, respectively. Signed by the Mayor on July 6, 1983, it was assigned Act No. 5-47 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-116. — Law 5-116 was introduced in Council and assigned Bill No. 5-61, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 26, 1984 and July 10, 1984, respectively. Signed by the Mayor on July 13, 1984, it was assigned Act No. 5-168 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-52. — Law 11-52, the "Omnibus Budget Support Act of 1995," was introduced in Council and assigned Bill No. 11-218, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 19, 1995,

and June 6, 1995, respectively. Signed by the Mayor on July 13, 1995, it was assigned Act No. 11-94 and transmitted to both Houses of Congress for its review. D.C. Law 11-52 became effective on September 26, 1995.

Legislative history of Law 12-264. — Law 12-264, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998 respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

Editor's notes. — References in other laws to Advisory Neighborhood Councils: Section 4 of the Act of October 30, 1975, D.C. Law 1-27, provided: "Any reference in any law of or relating solely to the District of Columbia, or in any rule, regulation, paper, report, or other document of the District of Columbia government (including any agency thereof) to the Advisory Neighborhood Councils shall be deemed to be, after the effective date of this act, a reference to the Advisory Neighborhood Commissions."

CASE NOTES

ANALYSIS

Areas.

Election contests.

Great weight.

Issues and concerns.

Notice to commissions.

Substantial compliance.

Sufficiency of evidence.

Areas.

For purposes of statute mandating that Council of the District of Columbia divide District into "neighborhood commission areas," "area" means definitely bounded piece of ground set aside for specific use or purpose; definite boundaries of term "area" are those of an affected Advisory Neighborhood Commission (ANC). D.C. Code 1981, § 1-251(a). *Neighbors United for a Safer Community v. District of Columbia Bd. of Zoning Adjustment*, 647 A.2d 793, 1994 D.C. App. LEXIS 171 (1994).

Election contests.

Court of Appeals lacked jurisdiction to consider candidate's petition to set aside election for advisory neighborhood commissioner for single member district, as result of candidate's failure to file petition within seven days of certification of election by Board of Elections and Ethics, absent any record basis upon which it could reasonably be concluded that candidate was misled by Board as to certification date or

that candidate or his counsel was unaware of certification until after seven-day period had expired; candidate asserted, without providing appropriate affidavit, that unnamed employee of Board misinformed him as to certification date. D.C. Code 1981, §§ 1-257, 1-258, 1-260(a), 1-268(a, b), 1-1315(b). *White v. District of Columbia Bd. of Elections & Ethics*, 537 A.2d 1133, 1988 D.C. App. LEXIS 45 (1988).

Great weight.

Public Service Commission was not required to give "great weight" to advice it received from advisory neighborhood commissions (ANC) in electric utility rate case; only new power plant involved in case was plant under construction in Maryland, which would have no direct impact of significance to neighborhood planning and development within any particular ANC area so as to trigger special notice requirement. D.C. Code 1981, §§ 1-251(c, d), 1-261(b), (c)(1), (d). *Office of People's Counsel v. Public Serv. Comm'n*, 630 A.2d 692, 1993 D.C. App. LEXIS 206 (1993).

Statutory requirement that issues and concerns raised in recommendations of advisory neighborhood commission shall be given great weight by board of zoning adjustment is intended to make certain that neighborhood views receive specific attention by agency concerned, and thus, for cases in which administrative determination was made prior to judicial decision which held that statute requires

board to elaborate, with precision, response to each concern raised by advisory neighborhood commission, if record reveals that agency was cognizant of and paid attention to pertinent and specific neighborhood issues and concerns raised by commission, then court will not reverse merely because decision did not satisfy specific prescriptions of decision. D.C. Code § 1-171i(d). *Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 1978 D.C. App. LEXIS 577 (1978).

Under statute requiring board of zoning adjustment to give great weight to issues and concerns raised in recommendations of advisory neighborhood commission, substantial compliance with statute is required for cases in which administrative precision preceded date of judicial decision holding that board was required to elaborate with precision responses to each concern raised by advisory neighborhood commission. D.C. Code §§ 1-171i(d), 1-1510. *Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 1978 D.C. App. LEXIS 577 (1978).

Issues and concerns.

Under statute requiring board of zoning adjustment to give great weight to issues and concerns raised in recommendations of advisory neighborhood commission, "issues and concerns" encompasses only legally relevant issues and concerns, and thus board's failure to consider and discuss irrelevant issue is not error. D.C. Code § 1-171i(d). *Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 1978 D.C. App. LEXIS 577 (1978).

Notice to commissions.

Statutory notice to District of Columbia advisory neighborhood commissions (ANC) is required for proposed governmental decisions affecting neighborhood planning and development, as specified in ANC statutes. D.C. Code 1981, §§ 1-251, 1-261. *Office of People's Counsel v. Public Serv. Comm'n*, 630 A.2d 692, 1993 D.C. App. LEXIS 206 (1993).

Advisory neighborhood commissions (ANC) were not entitled to special statutory notice of proposed government action in electric utility's rate case before Public Service Commission; only new power plant involved in case was plant under construction in Maryland, which would have no direct impact of significance to neighborhood planning and development within any particular ANC area so as to trigger special notice requirement. D.C. Code 1981, §§ 1-251(c), 1-261(b), (c)(1). *Office of People's Counsel v. Public Serv. Comm'n*, 630 A.2d 692, 1993 D.C. App. LEXIS 206 (1993).

City agency's failure to notify advisory neighborhood commission of application for building permit in its area was error; however, error was harmless since ANC had actual knowledge of

the impending construction and had an opportunity to present its views. D.C. Code § 1-171a et seq. *Shiflett v. District of Columbia Bd. of Appeals & Review*, 431 A.2d 9, 1981 D.C. App. LEXIS 288 (1981).

Substantial compliance.

"Substantial compliance" with statute requiring Zoning Board of Adjustment to discuss neighborhood commission recommendations in decisions in zoning cases means such compliance with essential requirements of the provision as may be sufficient for accomplishment of purposes of the provision. D.C. Code § 1-171i(d). *Wolf v. District of Columbia Bd. of Zoning Adjustment*, 397 A.2d 936, 1979 D.C. App. LEXIS 280 (1979).

Where sole concern identified by neighborhood commission in its letter of opposition to area variance sought by property owner was whether "permitting conversion of a house on a lot of under 2,700 square feet to three units would be in conflict with the protection of the character of the area as provided by zoning," and such concern was specifically addressed by members of the Board of Zoning Adjustment in their decision granting the variance, the Board acted in "substantial compliance" with statute requiring it to discuss neighborhood commission recommendations in zoning cases even though the Board failed to identify the neighborhood commission as the source of such concern. D.C. Code § 1-171i(d). *Wolf v. District of Columbia Bd. of Zoning Adjustment*, 397 A.2d 936, 1979 D.C. App. LEXIS 280 (1979).

For purposes of rule requiring substantial compliance with requirements of statute providing that issues and concerns raised in recommendations of advisory neighborhood commission shall be given great weight by board of zoning adjustment, "substantial compliance" is such compliance with essential requirements of statutory provision as may be sufficient for accomplishment of purposes thereof; it means actual compliance in respect to substance essential to every reasonable objective of statute. D.C. Code §§ 1-171i(d), 1-1510. *Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 1978 D.C. App. LEXIS 577 (1978).

In granting special exception to build office building, board of zoning adjustment substantially complied with statute requiring it to give great weight to issues and concerns raised in recommendations of advisory neighborhood commission. D.C. Code § 1-171i(d). *Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 1978 D.C. App. LEXIS 577 (1978).

Sufficiency of evidence.

Evidence was sufficient to support findings of board of zoning adjustment, which granted special exception for construction of profes-

sional office building in special purpose district, despite evidence antithetical to board's conclusion. D.C. Code § 1-1509(e). *Wheeler v. District*

of Columbia Board of Zoning Adjustment, 395 A.2d 85, 1978 D.C. App. LEXIS 577 (1978).

§ 1-207.39. National Capital Service Area.

(a) There is established within the District of Columbia the National Capital Service Area which shall include, subject to the following provisions of this section, the principal federal monuments, the White House, the Capitol Building, the United States Supreme Court Building, and the federal executive, legislative, and judicial office buildings located adjacent to the Mall and the Capitol Building, and is more particularly described in subsection (e) of this section.

(b) There is established in the Executive Office of the President the National Capital Service Director who shall be appointed by the President. The President, through the National Capital Service Director, shall assure that there is provided, utilizing District of Columbia governmental services to the extent practicable, within the area specified in subsection (a) of this section and particularly described in subsection (e) of this section, adequate fire protection and sanitation services. Except with respect to that portion of the National Capital Service Area comprising the United States Capitol Buildings and Grounds as defined in §§ 10-503.11 and 10-503.26, the United States Supreme Court Building and Grounds as defined in § 11 of the Act of August 18, 1949, as amended (40 U.S.C. § 13p), and the Library of Congress Buildings and Grounds as defined in § 11 of the Act of August 4, 1950, as amended (2 U.S.C. § 167j), the National Capital Service Director shall assure that there is provided within the remainder of such area specified in subsection (a) and subsection (e), adequate police protection and maintenance of streets and highways.

(c) The National Capital Service Director shall be entitled to receive compensation at the maximum rate as may be established from time to time for level IV of the Executive Schedule of § 5314 of Title 5 of the United States Code. The Director may appoint, subject to the provisions of Title 5 of the United States Code governing appointments in the competitive service, and fix the pay of, in accordance with the provisions of Chapter 51 and subchapter III of Chapter 53 of such title relating to classification and General Schedule pay rates, such personnel as may be necessary.

(d) Omitted.

(e)(1) Within 1 year after January 2, 1975, the President is authorized and directed to submit to the Congress a report on the feasibility and advisability of combining the Executive Protective Service and the United States Park Police within the National Capital Service Area, and placing them under the National Capital Service Director.

(2) Such report shall include such recommendations, including recommendations for legislative and executive action, as the President deems necessary in carrying out the provisions of paragraph (1) of this subsection.

(f)(1)(A) The National Capital Service Area referred to in subsection (a) of this section is more particularly described as follows: Beginning at that point

on the present Virginia-District of Columbia boundary due west of the northernmost point of Theodore Roosevelt Island and running due east to the eastern shore of the Potomac River; thence generally south along the shore at the mean high water mark to the northwest corner of the Kennedy Center; thence east along the north side of the Kennedy Center to a point where it reaches the E Street Expressway; thence east on the expressway to E Street Northwest and thence east on E Street Northwest to 18th Street Northwest; thence south on 18th Street Northwest to Constitution Avenue Northwest; thence east on Constitution Avenue to 17th Street Northwest; thence north on 17th Street Northwest to Pennsylvania Avenue Northwest; thence east on Pennsylvania Avenue to Jackson Place Northwest; thence north on Jackson Place to H Street Northwest; thence east on H Street Northwest to Madison Place Northwest; thence south on Madison Place Northwest to Pennsylvania Avenue Northwest; thence east on Pennsylvania Avenue Northwest to 15th Street Northwest; thence south on 15th Street Northwest to Pennsylvania Avenue Northwest; thence southeast on Pennsylvania Avenue Northwest to John Marshall Place Northwest; thence north on John Marshall Place Northwest to C Street Northwest; thence east on C Street Northwest to 3rd Street Northwest; thence north on 3rd Street Northwest to D Street Northwest; thence east on D Street Northwest to 2nd Street Northwest; thence south on 2nd Street Northwest to the intersection of Constitution Avenue Northwest and Louisiana Avenue Northwest; thence northeast on Louisiana Avenue Northwest to North Capitol Street; thence north on North Capitol Street to Massachusetts Avenue Northwest; thence southeast on Massachusetts Avenue Northwest so as to encompass Union Square; thence following Union Square to F Street Northeast; thence east on F Street Northeast to 2nd Street Northeast; thence south on 2nd Street Northeast to D Street Northeast; thence west on D Street Northeast to 1st Street Northeast; thence south on 1st Street Northeast to Maryland Avenue Northeast; thence generally north and east on Maryland Avenue to 2nd Street Northeast; thence south on 2nd Street Northeast to C Street Southeast; thence west on C Street Southeast to New Jersey Avenue Southeast; thence south on New Jersey Avenue Southeast to D Street Southeast; thence west on D Street Southeast to Canal Street Parkway; thence southeast on Canal Street Parkway to E Street Southeast; thence west on E Street Southeast to the intersection of Canal Street Southwest and South Capitol Street; thence northwest on Canal Street Southwest to 2nd Street Southwest; thence south on 2nd Street Southwest to Virginia Avenue Southwest; thence generally west on Virginia Avenue to 3rd Street Southwest; thence north on 3rd Street Southwest to C Street Southwest; thence west on C Street Southwest to 6th Street Southwest; thence north on 6th Street Southwest to Independence Avenue; thence west on Independence Avenue to 12th Street Southwest; thence south on 12th Street Southwest to D Street Southwest; thence west on D Street Southwest to 14th Street Southwest; thence south on 14th Street Southwest to the middle of the Washington Channel; thence generally south and east along the mid-channel of the Washington Channel to a point due west of the northern boundary line of Fort Lesley McNair; thence due east to the side of the Washington Channel; thence

following generally south and east along the side of the Washington Channel at the mean high water mark, to the point of confluence with the Anacostia River, and along the northern shore at the mean high water mark to the northern most point of the 11th Street Bridge; thence generally south and east along the northern side of the 11th Street Bridge to the eastern shore of the Anacostia River; thence generally south and west along such shore at the mean high water mark to the point of confluence of the Anacostia and Potomac Rivers; thence generally south along the eastern shore at the mean high water mark of the Potomac River to the point where it meets the present southeastern boundary line of the District of Columbia; thence south and west along such southeastern boundary line to the point where it meets the present Virginia-District of Columbia boundary; thence generally north and west up the Potomac River along the Virginia-District of Columbia boundary to the point of beginning.

(B) Where the area in subparagraph (A) of this paragraph is bounded by any street, such street, and any sidewalk thereof, shall be included within such area.

(2) Any federal real property affronting or abutting, as of December 24, 1973, the area described in paragraph (1) of this subsection shall be deemed to be within such area.

(3) For the purposes of paragraph (2) of this subsection, federal real property affronting or abutting such area described in paragraph (1) of this subsection shall:

(A) Be deemed to include, but not limited to, Fort Lesley McNair, the Washington Navy Yard, the Anacostia Naval Annex, the United States Naval Station, Bolling Air Force Base, and the Naval Research Laboratory; and

(B) Not be construed to include any area situated outside of the District of Columbia boundary as it existed immediately prior to December 24, 1973, nor be construed to include any portion of the Anacostia Park situated east of the northern side of the 11th Street Bridge, or any portion of the Rock Creek Park.

(g)(1) Subject to the provisions of paragraph (2) of this subsection, the President is authorized and directed to conduct a survey of the area described in this section in order to establish the proper metes and bounds of such area, and to file, in such manner and at such place as he may designate, a map and a legal description of such area, and such description and map shall have the same force and effect as if included in this chapter, except that corrections of clerical, typographical and other errors in any such legal descriptions and map may be made. In conducting such survey, the President shall make such adjustments as may be necessary in order to exclude from the National Capital Service Area any privately owned properties, and buildings and adjacent parking facilities owned by the District of Columbia government.

(2) In carrying out the provisions of paragraph (1) of this subsection, the President shall, to the extent that such survey, legal description, and map involves areas comprising the United States Capitol Buildings and Grounds as defined in §§ 10-503.11 and 10-503.26, and other buildings and grounds under the care of the Architect of the Capitol, consult with the Architect of the Capitol.

(h)(1) Except to the extent specifically provided by the provisions of this section, and amendments made by this section, nothing in this section shall be applicable to the United States Capitol Buildings and Grounds as defined in §§ 10-503.11 and 10-503.26, or to any other buildings and grounds under the care of the Architect of the Capitol, the United States Supreme Court Building and Grounds as defined in § 11 of the Act of August 18, 1949, as amended (40 U.S.C. § 13p), and the Library of Congress Buildings and Grounds as defined in § 11 of the Act of August 4, 1950, as amended (2 U.S.C. § 167j), and except to the extent herein specifically provided, including amendments made by this section, nothing in this section shall be construed to repeal, amend, alter, modify, or supersede any provision of §§ 10-503.11 to 10-503.19, 10-503.21 to 10-503.26, or any other of the general laws of the United States or any of the laws enacted by the Congress and applicable exclusively to the District of Columbia, or any rule or regulation promulgated pursuant thereto, in effect on the date immediately preceding January 2, 1975, pertaining to said buildings and grounds, or any existing authority, with respect to such buildings and grounds, vested by law, or otherwise, on such date immediately preceding January 2, 1975, in the Senate, the House of Representatives, the Congress, or any committee or commission or board thereof, the Architect of the Capitol, or any other officer of the legislative branch, the Chief Justice of the United States, the Marshal of the Supreme Court of the United States, or the Librarian of Congress.

(2) Notwithstanding the foregoing provision of this section, any of the services and facilities authorized by this chapter to be rendered or furnished (including maintenance of streets and highways, and services under § 1-207.31) shall, as far as practicable, be made available to the Senate, the House of Representatives, the Congress, or any committee or commission or board thereof, the Architect of the Capitol, or any other officer of the legislative branch vested by law or otherwise on such date immediately preceding January 2, 1975, with authority over such buildings and grounds, the Chief Justice of the United States, the Marshal of the Supreme Court of the United States, and the Librarian of Congress, upon their request, and, if payment would be required for the rendition or furnishing of a similar service or facility to any other federal agency, payment therefor shall be made by the recipient thereof, upon presentation of proper vouchers, in advance or by reimbursement (as may be agreed upon by the parties rendering and receiving such services).

(i) Except to the extent otherwise specifically provided in the provisions of this section, and amendments made by this section, all general laws of the United States and all laws enacted by the Congress and applicable exclusively to the District of Columbia, including regulations and rules promulgated pursuant thereto, in effect on the date immediately preceding January 2, 1975, and which, on such date immediately preceding January 2, 1975, are applicable to and within the areas included within the National Capital Service Area pursuant to this section shall, on and after January 2, 1975, continue to be applicable to and within such National Capital Service Area in the same manner and to the same extent as if this section had not been enacted, and

shall remain so applicable until such time as they are repealed, amended, altered, modified, or superseded, and such laws, regulations and rules shall thereafter be applicable to and within such area in the manner and to the extent so provided by any such amendment, alteration, or modification.

(j) In no case shall any person be denied the right to vote or otherwise participate in any manner in any election in the District of Columbia solely because such person resides within the National Capital Service Area.

(Dec. 24, 1973, 81 Stat. 825, Pub. L. 93-198, title VII, § 739.)

Prior Codifications. — 1981 Ed., § 9-142.
1973 Ed., § 9-146.

References in text. — “Level IV of the Executive Schedule of § 5314 of Title 5, U.S.C.”, referred to in subsection (c), is Level III.

The “Executive Protective Service”, referred to in subsection (e) was changed to “United States Secret Service Uniformed Division” by the Act of November 15, 1977, 91 Stat. 1371, Pub. L. 95-179.

“Section 1-1131 (§ 1-207.31, 2001 Ed.)”, referred to in subsection (h)(2), was repealed September 13, 1982, 96 Stat. 877, Pub. L. 97-258, § 5(b).

Editor’s notes. — Delegation of functions: Executive Order No. 11815, October 23, 1974, 39 F.R. 37963, provided that the President of the United States, under § 739(g) of the District of Columbia Self-Government and Governmental Reorganization Act, could authorize and direct the Chairman of the National Capital Planning Commission to carry out all duties vested in the President by § 739(g) with respect to the establishment of the metes and bounds of the National Capital Service Area.

Definitions applicable: The definitions in § 1-201.03 apply to this section.

CASE NOTES

In general.

All parts of District of Columbia are within exclusive congressional jurisdiction, regardless of whether they are privately or federally owned, therefore, if presumption of implied exemption from taxation for privately owned property on federally owned land is to be derived from constitutional article establishing certain “federal enclaves” within which congressional authority to legislate is exclusive, presumption would apply to entire district, and

that presumption was overcome by statute governing taxation of personal property therefore privately owned property on federally owned land was subject to tax. D.C. Code 1981, § 47-1507; U.S. Const. Art. 1, § 8, cl. 17. *ITEL Corp. v. District of Columbia*, 448 A.2d 261, 1982 D.C. App. LEXIS 394 (1982), writ of certiorari denied by 459 U.S. 1087, 103 S. Ct. 570, 74 L. Ed. 2d 932, 1982 U.S. LEXIS 4710, 51 U.S.L.W. 3460 (1982).

§ 1-207.40. Emergency control of police.

(a) Notwithstanding any other provision of law, whenever the President of the United States determines that special conditions of an emergency nature exist which require the use of the Metropolitan Police force for federal purposes, he may direct the Mayor to provide him, and the Mayor shall provide, such services of the Metropolitan Police force as the President may deem necessary and appropriate. In no case, however, shall such services made available pursuant to any such direction under this subsection extend for a period in excess of 48 hours unless the President has, prior to the expiration of such period, notified the Chairmen and ranking minority members of the Committees on the District of Columbia of the Senate and the House of Representatives, in writing, as to the reason for such direction and the period of time during which the need for such services is likely to continue.

(b) Subject to the provisions of subsection (c) of this section, such services

made available in accordance with subsection (a) of this section shall terminate upon the end of such emergency, the expiration of a period of 30 days following the date on which such services are first made available, or the enactment into law of a joint resolution by the Congress providing for such termination, whichever first occurs.

(c) Notwithstanding the foregoing provisions of this section, in any case in which such services are made available in accordance with the provisions of subsection (a) of this section during any period of an adjournment of the Congress sine die, such services shall terminate upon the end of the emergency, the expiration of the 30-day period following the date on which Congress first convenes following such adjournment, or the enactment into law of a joint resolution by the Congress providing for such termination, whichever first occurs.

(d) Except to the extent provided for in subsection (c) of this section, no such services made available pursuant to the direction of the President pursuant to subsection (a) of this section shall extend for any period in excess of 30 days, unless the Senate and the House of Representatives enact into law a joint resolution authorizing such an extension.

(Dec. 24, 1973, 87 Stat. 830, Pub. L. 93-198, title VII, § 740; Oct. 12, 1984, 98 Stat. 1975, Pub. L. 98-473, § 131(i), (j).)

Cross references. — Demonstrations, marches, and assemblies relating to federal government, reimbursement of costs incurred by District, see § 1-207.37.

Metropolitan Police, assistance to Secret Service, see § 1-207.31.

Prior Codifications. — 1981 Ed., § 4-102. 1973 Ed., § 4-101a.

Editor's notes. — Effective period of § 131

of Public Law 98-473: Section 131(n) of Public Law 98-473 provided that the provisions of this section shall be effective hereafter without limitation as to fiscal year, notwithstanding any other provision of the joint resolution. Public Law 98-473 was approved October 12, 1984.

Definitions applicable: The definitions in § 1-201.03 apply to this section.

§ 1-207.41. Holding Office in the District. [Repealed].

Repealed.

(Dec. 24, 1973, 87 Stat. 831, Pub. L. 93-198, title VII, § 741; Apr. 17, 1974, 88 Stat. 87, Pub. L. 93-268, § 4(c).)

§ 1-207.42. Open meetings.

(a) All meetings (including hearings) of any department, agency, board, or commission of the District government, including meetings of the Council of the District of Columbia, at which official action of any kind is taken shall be open to the public. No resolution, rule, act, regulation, or other official action shall be effective unless taken, made, or enacted at such meeting.

(b) A written transcript or a transcription shall be kept for all such meetings and shall be made available to the public during normal business hours of the District government. Copies of such written transcripts or copies of such transcriptions shall be available, upon request, to the public at reasonable cost.

(Dec. 24, 1973, 87 Stat. 831, Pub. L. 93-198, title VII, § 742.)

Cross references. — Advisory neighborhood commission security fund, requests for reimbursement from fund, consideration in public meetings, see § 1-309.14.

Advisory Neighborhood Commissions, open meeting requirement, see § 1-309.11.

Commission on Judicial Disabilities and Tenure, authority to make rules and regulations for commission's operations, application of certain selected provisions of Administrative Procedure Act, see § 11-1525.

Convention center authority board of directors, open meeting requirement, see § 10-1202.05.

Convention center board of directors, open meeting requirement, see § 10-1211.

Fees for reproduction of transcripts and other records, authority to establish and collect, see § 1-301.49.

Financial responsibility and management assistance authority, open meeting requirement, see § 47-391.08.

Fire protection study commission, open meeting requirement, see § 3-1102.

Health and hospitals public benefit corporation board of directors, open meeting requirement, see § 44-1102.04.

Merit system, office of employee appeals, vote or decision on appeal to be made in public hearing, see § 1-606.10.

Sports and entertainment commission, open meeting requirement, see § 3-1404.

Water and sewer authority board of directors, open meeting requirement, see § 34-2202.04.

Section references. — This section is referred to in §§ 1-129.04, 1-204.34, 4-752.03, 4-1303.53, 4-1371.08, 16-1056, 16-4205, and 16-4207.

Prior Codifications. — 1981 Ed., § 1-1504. 1973 Ed., § 1-1503a.

Editor's notes. — Definitions applicable: The definitions contained in § 1-201.03 apply to this section.

CASE NOTES

ANALYSIS

Closed sessions.

Zoning and planning determinations.

Closed sessions.

Deliberative process incident to board of appeals and review's final orders in regard to application for license to carry concealed pistol was not covered by "Sunshine Act"; thus, board's orders, which affirmed metropolitan police department's denial of application, were not defective either because board members arrived at their decision at nonpublic conference after public hearing in which applicant and others testified or because no transcript of such conference was made. D.C. Code §§ 1-1503a, 1-1503a(b), 1-1509(b), 22-3206. *Jordan v. District of Columbia*, 362 A.2d 114, 1976 D.C. App. LEXIS 344 (1976).

The term "superintendent," as used in statutory scheme and contract, envisioned an employer-employee relationship between the District of Columbia Board of Education and the superintendent of schools; accordingly, while the meetings at which the Board developed and adopted standards by which it would evaluate the performance of the present superintendent were not held to terminate the superintendent's employment, the meetings' agenda were unquestionably "related matter" as contemplated by statute and were properly subject to closed sessions. D.C. Code §§ 31-101(e), 31-105, 31-108. *Goodwin v. District of Columbia Board of Education*, 343 A.2d 63, 1975 D.C. App. LEXIS 221 (1975).

District of Columbia Board of Education's adoption of evaluative standards by which to

assess the performance of the present superintendent of schools was not a "final policy decision" within the meaning of statute providing, in part, that "no final policy decision on such other matters may be made by the Board of Education in a meeting (or part thereof) closed to the public." D.C. Code § 31-101(e). *Goodwin v. District of Columbia Board of Education*, 343 A.2d 63, 1975 D.C. App. LEXIS 221 (1975).

Given the express intent of Congress to allow certain meetings of the District of Columbia Board of Education to be closed and the embodiment of that intent in a specific statute, that statute remained in effect as a qualification of later statute requiring meetings of the District government to be open to the public. *District of Columbia Self-Government and Governmental Reorganization Act*, §§ 742(a), 761, 87 Stat. 774; D.C. Code § 31-101(e). *Goodwin v. District of Columbia Board of Education*, 343 A.2d 63, 1975 D.C. App. LEXIS 221 (1975).

Zoning and planning determinations.

Where decision of Board of Zoning Adjustment was made in executive session which was quasi-judicial action in which historically only voting members play role, Sunshine Act was not applicable. D.C. Code § 1-1503(a). *Dupont Circle Citizens Asso. v. District of Columbia Board of Zoning Adjustment*, 364 A.2d 610, 1976 D.C. App. LEXIS 372 (1976).

Statute providing that all "meetings" of Board of Zoning Adjustment shall be open to public requires public hearings, but does not require that conference at which Board considers and decides a case be public. D.C. Code § 5-420. *Dupont Circle Citizens Asso. v. District of Columbia Board of Zoning Adjustment*,

364 A.2d 610, 1976 D.C. App. LEXIS 372 (1976).

§ 1-207.43. Termination of the District's Authority to Borrow from the Treasury. [Omitted].

Editor's notes. — The text of § 1-207.43 is omitted because the corresponding text of section 743 of Public Law 93-198 amended another law.

Part E

AMENDMENTS TO THE DISTRICT OF COLUMBIA ELECTION ACT AMENDMENTS.

§ 1-207.51. Amendments [Omitted].

Editor's notes. — The text of § 1-207.51 is omitted because the corresponding text of section 751 of Public Law 93-198 amended another law.

§ 1-207.52. District Council authority over elections.

Notwithstanding any other provision of this chapter or of any other law, the Council shall have authority to enact any act or resolution with respect to matters involving or relating to elections in the District.

(Dec. 24, 1973, 87 Stat. 836, Pub. L. 93-198, title VII, § 752.)

Cross references. — District of Columbia administration, self-government, supersession of inconsistent laws, see § 1-207.61.

Section references. — This section is referred to in §§ 1-207.17 and 1-636.02.

Prior Codifications. — 1981 Ed., § 1-1307. 1973 Ed., § 1-1105a.

Editor's notes. — Definitions applicable: The definitions contained in § 1-201.03 apply to this section.

CASE NOTES

Construction and application.

District Council was not obliged to allow initiatives that would have had the effect of authorizing discrimination prohibited by the Human Rights Act to be put to voters, and then to repeal them, or to wait for them to be challenged as having been improper subjects of initiative, should they be approved by voters; rather, the Council was authorized under the Home Rule Act to legislate, as it did through

the Initiative Procedures Act (IPA), that the Board of Elections and Ethics must refuse to accept initiatives and referenda that would authorize prohibited discrimination. *Jackson v. D.C. Bd. of Elections & Ethics*, 999 A.2d 89, 2010 D.C. App. LEXIS 400 (2010), writ of certiorari denied by 131 S. Ct. 1001, 178 L. Ed. 2d 827, 2011 U.S. LEXIS 730, 79 U.S.L.W. 3419 (U.S. 2011).

Part F

RULES OF CONSTRUCTION.

§ 1-207.61. Construction.

(a) To the extent that any provisions of this chapter are inconsistent with

the provisions of any other laws, the provisions of this chapter shall prevail and shall be deemed to supersede the provisions of such laws.

(b) No law or regulation which is in force on January 2, 1975, shall be deemed amended or repealed by this chapter except to the extent specifically provided herein or to the extent that such law or regulation is inconsistent with this chapter, but any such law or regulation may be amended or repealed by act or resolution as authorized in this chapter, or by Act of Congress, except that, notwithstanding the provisions of § 1-207.52, such authority to repeal shall not be construed as authorizing the Council to repeal or otherwise alter, by amendment or otherwise, any provision of subchapter III of Chapter 73 of Title 5, United States Code [5 U.S.C. § 7321 et seq.], in whole or in part.

(Dec. 24, 1973, 87 Stat. 820, Pub. L. 93-198, title VII, §§ 717(b), 761; Mar. 3, 1979, D.C. Law 2-139, § 3205(kk), 25 DCR 5740; Aug. 1, 1979, D.C. Law 3-14, § 2(d), 25 DCR 10565.)

Cross references. — Merit system, effective date provisions, see § 1-636.02.

Prior Codifications. — 1981 Ed., § 1-208. 1973 Ed., § 1-128.

Legislative history of Law 2-139. — Law 2-139 was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978 and October 31, 1978, respectively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and trans-

mitted to both Houses of Congress for its review.

Legislative history of Law 3-14. — Law 3-14 was introduced in Council and assigned Bill No. 3-114, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on May 8, 1979 and May 22, 1979, respectively. Signed by the Mayor on June 8, 1979, it was assigned Act No. 3-51 and transmitted to both Houses of Congress for its review.

CASE NOTES

Initiatives.

Proposed initiative, which sought to bar construction and operation of convention center, and which represented effort through both substantive and fiscal means to reverse legislative policy determination that District of Columbia should build and operate convention center,

proposed a "law" within meaning of District of Columbia charter amendments relating to initiative proposals. D.C. Code 1980 Supp. § 1-181(a). *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

§ 1-207.62. Severability.

If any particular provision of this chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of this chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

(Dec. 24, 1973, 87 Stat. 779, Pub. L. 93-198, title VII, § 762, as added, Oct. 12, 1984, 98 Stat. 1975, Pub. L. 98-473, § 131(l).)

Part G
EFFECTIVE DATES.

§ 1-207.71. Effective dates.

(a) Subchapters I and V, and parts A and G, and § 1-207.22 of subchapter VII shall take effect on December 24, 1973.

(b) Sections 1-207.12, 1-207.13, 1-207.14, and 1-207.15 of subchapter VII, and section 1-204.01(b) of subchapter IV, and subchapter II shall take effect July 1, 1974, except that any provision thereof which in effect transfer authority to appoint any citizen member of the National Capital Planning Commission of the District of Columbia Redevelopment Land Agency shall take effect January 2, 1975.

(c) Subchapter III and IV, except § 1-204.01(b) of subchapter IV, shall take effect January 2, 1975, if subchapter IV is accepted by a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum.

(d) Subchapter VI and parts D and F and §§ 1-207.11, 1-207.16, 1-207.17, 1-207.18, 1-207.19, 1-207.21, and 1-207.23 of subchapter VII shall take effect only if and upon the date that subchapter IV becomes effective.

(e) Part E of subchapter VII shall take effect on the date on which subchapter IV is accepted by a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum.

(Dec. 24, 1973, 87 Stat. 779, Pub. L. 93-198, title VII, § 771.)

CHAPTER 3. SPECIFIED GOVERNMENTAL AUTHORITY.

Subchapter I. Additional Governmental Powers and Responsibilities

PART A

General

Sec.

- 1-301.01. Additional powers of Mayor, Council, and Director.
- 1-301.02. [Repealed].
- 1-301.03. Powers and duties of Director of Department of Licenses, Investigation and Inspections; delegation of authority.
- 1-301.04. Settlement for real estate acquired by purchase or condemnation.
- 1-301.05. Power conferred by §§ 1-301.01 to 1-301.04 as additional.

PART B

Subpoenas, Administration of Oaths, and Documents Concerning Police Officers and Firefighters

- 1-301.21. Subpoena power.
- 1-301.22. Administration of oaths.
- 1-301.23. Executive Secretary authorized to execute certain documents.

PART C

The Council

- 1-301.41. Definitions.
- 1-301.42. Legislative immunity.
- 1-301.43. Obstruction of Council proceedings and investigations; penalty.
- 1-301.44. Independence established and recognized.
- 1-301.44a. Independence of legislative branch information technology.
- 1-301.44b. Legislative branch information technology acquisition.
- 1-301.44c. Disclosure of information to the Council; District of Columbia Auditor; conditions on disclosure.
- 1-301.45. Construction of terms set forth in acts and resolutions.
- 1-301.46. Enacting and resolving clauses in acts and resolutions; numbering of sections.
- 1-301.47. Definition of terms set forth in acts and resolutions.
- 1-301.47a. Fiscal impact statements.
- 1-301.48. Seal.
- 1-301.49. Council record reproduction fees authorized.

PART D

The Mayor

- 1-301.61. Submission of statement of impact of proposed acts on taxpayers.

Sec.

- 1-301.62 to 1-301.68. [Transferred].
- 1-301.69. Abolition or consolidation of offices; reduction of employees; appointments to and removal from office.
- 1-301.70. Taxes not to be anticipated by sale or hypothecation.
- 1-301.71. Hack stands — Location.
- 1-301.72, 1-301.73. [Repealed].
- 1-301.74. Authority to fix certain licensing and registration fees.
- 1-301.75. Increase or decrease of fees authorized in § 1-301.74.
- 1-301.76. Power to grant pardons and respites; commissioning of officers; execution of laws.
- 1-301.77. Prohibition on Capital Funds for Operating Expenses.
- 1-301.78. Grants for planning and planning implementation purposes.
- 1-301.79. Rules.

PART DI

Attorney General for the District of Columbia

- 1-301.81. Duties of the Attorney General for the District of Columbia.
- 1-301.82. Appointment of the Attorney General.
- 1-301.83. Minimum qualifications and requirements for Attorney General.
- 1-301.84. Forfeiture of the position of Attorney General.
- 1-301.85. Attorney General salary.
- 1-301.86. Annual budget for the Office of Attorney General.
- 1-301.87. Chief Deputy Attorney General, Deputy Attorneys General, and Assistant Attorneys General.
- 1-301.88. Authority to administer oaths.
- 1-301.89. Appointment of special counsel.
- 1-301.89a. Authority to issue subpoenas for the production of documents.
- 1-301.90. Inability to carry out duties as Attorney General.

PART E

Additional Authority of the Director of the Office of Contracting and Procurement

- 1-301.91. Leasing authority.
- 1-301.92. Use of exchange allowances or sale proceeds to purchase similar items.

PART F

Additional Authority of the Attorney General

- 1-301.111 to 1-301.114. [Repealed].

SPECIFIED GOVERNMENTAL AUTHORITY

PART Fi

Office of the Inspector General

- 1-301.115a. Creation and duties of Office of the Inspector General.
- 1-301.115b. Deadline for appointment of Inspector General.

PART G

Authority to Participate in Multistate Efforts to Develop Sales and Use Taxes

- 1-301.121. Definitions.
- 1-301.122. Authority to participate in multistate negotiations.
- 1-301.123. Authority to enter into agreement.
- 1-301.124. Relationship to District of Columbia law.
- 1-301.125. Agreement requirements.
- 1-301.126. Cooperating sovereigns.
- 1-301.127. Limited binding and beneficial effect.
- 1-301.128. Seller and third party liability.

PART H

Chief Financial Officer for the Department of Housing and Community Development

- 1-301.141. Chief Financial Officer for the Department of Housing and Community Development.

PART I

Chief Financial Officer Health Care Analysis and Overtime Plan

- 1-301.151. Analysis of health care costs at Department of Corrections; plan to create Public Safety Overtime Bank.

PART J

District of Columbia Auditor Subpoena and Oath Authority.

- 1-301.171. Subpoena power.
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- 1-301.174. District of Columbia Auditor Legal Fund.

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District of Columbia Auditor Compliance Unit

- 1-301.181. Establishment of a compliance unit.
- 1-301.182. Powers of the Unit.
- 1-301.183. Reporting requirements.
- 1-301.184. Compliance review reporting requirements.

PART L

Office of the Deputy Mayor for Public Safety and Justice

Sec.

- 1-301.191. Office of the Deputy Mayor for Public Safety and Justice; establishment; authority.

Subchapter II. Regulatory Authority

PART A

Police Regulations

- 1-303.01. Police regulations.
- 1-303.02. Publication of regulations; effective date.
- 1-303.03. Regulations for protection of life, health, and property.
- 1-303.04. Building regulations.
- 1-303.05. Additional penalties for violation of regulations.

PART B

Outdoor Signs

- 1-303.21. Regulations.
- 1-303.22. License required; fee.
- 1-303.23. Penalties; publication of regulations.

PART C

General

- 1-303.41. Regulations for the keeping, leashing, and running at large of dogs.
- 1-303.42. Expenditures for emergencies.
- 1-303.43. Regulations relative to firearms, explosives, and weapons.
- 1-303.44. Regulations for construction, repair, and operation of elevators.

Subchapter III. Streets, Public Rights of Way, and Public Property

- 1-305.01. Cleaning streets, alleys, and avenues; maintenance of sewers.
- 1-305.02. Sale of street sweepings authorized.
- 1-305.03. Maintenance of lights outside city limits.

Subchapter III-A. Comprehensive Plan

PART A

General

- 1-306.01. District elements of comprehensive plan prepared; purposes.
- 1-306.02. Mayor to submit proposed Land Use Element and map; submission of amendments to District elements of comprehensive plan; specifications; approval.

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Sec.

- 1-306.03. Mayor to propose ward plans; updated plans; public hearing; transmission to Council for adoption.
- 1-306.04. Preserving and ensuring community input.
- 1-306.05. Publication of the Comprehensive Plan.
- 1-306.06. Review of building, construction, or public space permits.
- 1-306.07. Zoning conformity.

PART B

Housing Linkage Requirement of the Housing Element

- 1-306.31. Housing linkage objective.
- 1-306.32. Housing linkage purpose.
- 1-306.33. Housing linkage policies — Requirements.
- 1-306.34. Required housing where existing housing is removed.
- 1-306.35. Applicant's choice.
- 1-306.36. Housing trust fund requirement.
- 1-306.37. Housing trust fund requirement where existing housing removed.
- 1-306.38. Zoning Commission powers.
- 1-306.39. Zoning regulations.
- 1-306.40. Comprehensive plan requirement.
- 1-306.41. Exceptions.
- 1-306.42. Building permits associated with street or alley closing or zoning density increases.
- 1-306.43. Street or alley closings or zoning density increases associated with housing trust fund contributions.
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- 1-306.45. Regulations adopted to implement this part.

Subchapter IV. Special Programs

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- 1-307.01. District of Columbia student loan insurance program.
- 1-307.02. District of Columbia medical assistance program.
- 1-307.02a. Minimum maintenance needs allowance for an institutionalized Medicaid beneficiary with a community spouse.
- 1-307.03. Medical assistance expansion program establishment.
- 1-307.04. Supplementary medical insurance program.
- 1-307.05. Children's Health Insurance Program.
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PART B

Free Clinic Liability Indemnification Assistance Program

Sec.

- 1-307.21 to 1-307.26. [Expired].

PART C

Medical Benefits Protection

- 1-307.41. Insurer obligations.
- 1-307.42. Employer obligations.
- 1-307.43. Recoupment of amounts spent on child medical care.

PART D

Opportunity Accounts

- 1-307.61. Definitions.
- 1-307.62. Establishment of Opportunity Account Office.
- 1-307.63. Solicitation and consideration of proposals by organizations to administer opportunity account programs.
- 1-307.64. Responsibilities of administering organization.
- 1-307.65. Financial institution establishment of opportunity accounts.
- 1-307.66. Eligibility to open an opportunity account; account limit.
- 1-307.67. Matching funds and return of matching funds; tax exemption.
- 1-307.68. Use of opportunity account funds.
- 1-307.69. Emergency withdrawal.
- 1-307.70. Disposition upon death.
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- 1-307.81. Definitions.
- 1-307.82. Establishment of the District of Columbia Medical Liability Captive Insurance Agency.
- 1-307.83. Authority of the Agency.
- 1-307.84. Management of the Agency.
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- 1-307.87. Plan of operation for the Agency.
- 1-307.88. Annual report to the Mayor and Council.

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Sec.

- 1-307.89. Liabilities of Risk Officer, captive manager, and Advisory Council.
- 1-307.90. Coverage.
- 1-307.91. Establishment of the Medical Liability Captive Trust Fund.
- 1-307.92. Exemption from procurement and merit personnel laws.
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- 1-308.02. PILOT agreements.
- 1-308.03. Approval by the Council.
- 1-308.04. Payment and collection of payments in lieu of taxes.
- 1-308.05. Bond authorization.
- 1-308.06. Details of Bonds.
- 1-308.07. Security for Bonds.
- 1-308.08. Default.
- 1-308.09. Liability.
- 1-308.10. Prior legislation.

PART F

Poverty Lawyer Loan Assistance Repayment Program

- 1-308.21 to 1-308.29. [Repealed].

Subchapter V. Advisory Neighborhood Commissions

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- 1-309.01. Purpose; definitions.
- 1-309.02. Advisory Neighborhood Commission areas.
- 1-309.03. Single-member districts.
- 1-309.04. Advisory Neighborhood Commissions — Petition required; established by resolution.
- 1-309.05. Advisory Neighborhood Commissions — Qualifications of members; nomination by petition.
- 1-309.06. Advisory Neighborhood Commissions — Election of members; term of office; vacancies; change in residency; resignation; removal.
- 1-309.07. Advisory Neighborhood Commissions — Determination of election winners.
- 1-309.08. Boundary changes.
- 1-309.09. Conduct of elections.
- 1-309.10. Advisory Neighborhood Commissions — Duties and responsibilities; notice; great weight; access to documents; reports; contributions.

Sec.

- 1-309.11. Advisory Neighborhood Commissions — Meetings; bylaws governing operation and internal structure; officers.
- 1-309.12. Advisory Neighborhood Commissions — Joint meetings; involvement of neighborhood groups; service area coordinators; service area manager; citizen's advisory mechanism.
- 1-309.13. Advisory Neighborhood Commissions — Funds; audit of accounts; employees; financial reports; publications.
- 1-309.14. Advisory Neighborhood Commission Security Fund.
- 1-309.15. Office of Advisory Neighborhood Commissions; appointment of Executive Director.

PART B

Additional Period for Circulation of Petitions

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- 1-309.32. Supplementary petitions.
- 1-309.33. Qualifications of members.
- 1-309.34. Election of members; term of office; vacancies; change in residency.
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- 1-315.01. Purposes.
- 1-315.02. Definitions.
- 1-315.03. Process of reorganization defined.
- 1-315.04. Preparation, transmittal, publication, and effective date of reorganization plan.
- 1-315.05. Contents and format of reorganization plan.
- 1-315.06. Transmittal of District of Columbia government organization chart.
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Subchapter VII. Surety

- 1-317.01. Persons prohibited from becoming surety upon bond.

Subchapter VIII. Governmental Volunteers

- 1-319.01. Utilization by District government encouraged; exception.
- 1-319.02. Promulgation of regulations.
- 1-319.03. Conflicts of interest; ineligibility for employee benefits; liability of District for torts of volunteers.
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Attorney for the District of Columbia.

1-319.05. Definitions.

Subchapter IX. Honoraria

1-321.01. Mayor's authority to determine honorariums; deposit of funds in Treasury; receipt of honorarium without prejudice to retirement compensation; "honorarium" defined.

1-321.02. Applicability of this subchapter.

1-321.03. Refund of unearned fees.

1-321.04. Authority to fix and change licensing periods; proration of fee.

1-321.05. References to boards, commissions, and committees mentioned in this subchapter.

1-321.06. Appropriation for administration of sections mentioned in § 1-321.02.

Subchapter X. Certain reports

1-323.01. [Repealed].

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1-323.03. Originals of discontinued reports to be preserved for public inspection.

Subchapter XI. Special Funds

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1-325.01. Productivity Bank Fund established.

1-325.02. Rulemaking.

PART B

Public Planning Capital Project Fund

1-325.11. Establishment of Public Planning Capital Project Fund.

PART C

Department of Corrections Reimbursement Fund

1-325.21. Department of Corrections Reimbursement Fund.

PART D

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1-325.31. Fiscal Year 2006 Educational Investments Fund for District of Columbia Public Schools and Public Charter Schools.

PART E

Schools Modernization Fund

1-325.41. Schools Modernization Fund established.

1-325.42. Budget submission requirements.

1-325.43. Bond authorization.

1-325.44. Criteria for use of bond revenue by District of Columbia Public Schools.

1-325.45. Annual report; review of funding priorities.

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1-325.51. Funds for HIV/AIDS Crisis Area Capacity Building.

1-325.52. Rulemaking.

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PART G

Fee Collection Incentive Fund

1-325.61. Fee Collection Incentive Fund.

PART H

Greater Southeast Community Hospital Capital Equipment Fund

1-325.71. Establishment of Greater Southeast Community Hospital Capital Equipment Fund.

PART I

FEMS Special Events Fee Fund

1-325.81. FEMS Special Events Fee Fund.

PART J

Solid Waste Disposal Cost Recovery Special Account

1-325.91. Solid Waste Disposal Cost Recovery Special Account.

PART K

Anti-Graffiti Mural Assistance Program Fund

1-325.101. Anti-Graffiti Mural Assistance Program Fund.

PART L

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1-325.111. Business Improvement District Litter Cleanup Assistance Fund.

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Community-Based Violence Reduction Fund

- 1-325.121. Establishment of Community-Based Violence Reduction Fund.

PART N

Pedestrian and Bicycle Safety and Enhancement Fund

- 1-325.131. Establishment of Pedestrian and Bicycle Safety and Enhancement Fund.

PART O

Veterans Appreciation Scholarship Fund

- 1-325.141. Veterans Appreciation Scholarship Fund.

PART P

Capital Project Support Fund

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Subchapter I. Additional Governmental Powers and Responsibilities.

Part A

GENERAL.

§ 1-301.01. Additional powers of Mayor, Council, and Director.

(a) *Waiver of business license renewal fees for personnel of armed forces.* — The Council of the District of Columbia is authorized and empowered within its discretion, in accordance with such regulations as it may make, to provide for the waiver of payment by any person in the military service of the United States of any annual or other periodic fee required by law to be paid to the District of Columbia or to any District of Columbia board or commission as a condition to retaining or renewing any license or permit to engage in any business or calling or to practice any profession in the District of Columbia.

(b)(1) *Bond requirements for certain businesses; amount; termination of surety's liability; notification by surety of payment on bond; insolvency of surety; action on bond; amount of recovery; certified copy of bond; license examination.* — The Council of the District of Columbia is authorized and empowered within

its discretion to make and modify, and the Mayor of the District of Columbia is authorized and empowered within his discretion to enforce, regulations requiring persons, firms, and corporations, other than utility companies, engaged within the District of Columbia in the business of plumbing or gas fitting, or of installing, maintaining, or repairing heating, ventilating, air conditioning, or mechanical refrigerating apparatus, equipment, appliances, systems, or parts thereof, or of installing, maintaining, or repairing apparatus, equipment, fixtures, appliances, or wiring, using or conducting electric current, to furnish and keep in force a bond running to the District of Columbia with corporate surety authorized by the Secretary of the Treasury to do business pursuant to § 9305 of Title 31, United States Code, or by the Insurance Department of the District of Columbia to issue surety bonds in the District of Columbia which meet the statutory capital and surplus requirements or as otherwise determined by the Mayor to be appropriate and necessary in the amount for underwriting such bonds in an amount not exceeding \$5,000, conditioned upon the performance in accordance with law and regulations in force in the District of Columbia of all such work undertaken by such person, firm, or corporation, and to keep the District of Columbia harmless from the consequences of any and all acts performed by said person, firm, or corporation in connection with such business during the period covered by the said bond.

(2) The surety on any such bond may terminate its liability under such bond by giving 30 days written notice thereof, served either personally or by registered mail, to the principal and to the Mayor; and upon giving such notice the surety shall be discharged from all liability under such bond for any act or omission of the principal occurring after the expiration of 30 days from the date of service of such notice. Unless on or before the expiration of such period the principal shall duly file a new bond in like amount and conditioned as the original in substitution of the bond so terminated, the license of the principal to engage in such business shall likewise terminate upon the expiration of such period. Upon making any payment on account of its bond, the surety shall immediately notify the Mayor.

(3) In the event the surety becomes insolvent or a bankrupt, or ceases to be authorized by the Secretary of the Treasury to do business pursuant to § 8 of Title 6, United States Code [see now 31 U.S.C. § 9305], or by the Insurance Department of the District of Columbia, to do business in the District of Columbia, the principal shall, within 10 days after notice thereof, given by the Mayor, duly file a new bond in like amount and conditioned as the original, and, if the principal shall fail to do so, the license of such principal shall terminate. If a recovery be had on any bond, the principal shall restore the bond to its original amount.

(4) Any person aggrieved by the violation of any law or regulation in force in the District of Columbia relating to such business shall have, in addition to his right of action against said person, firm, or corporation, a right to bring suit against the surety on said bond, either alone or jointly with the principal thereon, and to recover in an amount not exceeding the penalty of the bond any damages sustained by reason of any act, transaction, or conduct of the

principal which is in violation of law or regulation in force in the District of Columbia relating to such business: Provided, however, that nothing in this subsection shall be construed to impose upon the surety on any such bond a greater liability than the total amount thereof or the amount remaining unextinguished by any prior recovery or recoveries as the case may be.

(5) The Mayor shall furnish to anyone applying therefor a certified copy of any such bond filed with them upon payment of a fee to be fixed by the Mayor therefor, and such certified copy shall be prima facie evidence in any court that such bond was duly executed and delivered by the person, firm, or corporation whose name appears therein.

(6) The Council is further authorized to provide, in accordance with such regulations as it may prescribe, for the examination of the qualifications and fitness of all applicants for licenses to engage in any of the businesses herein enumerated by a board, consisting of not less than 2 persons who have been actively engaged in the District of Columbia for at least 5 years next preceding their appointment in the business for which license is sought (one of whom shall have been an owner or manager and one of whom shall have been an employee competent to superintend the performance of work) and not less than 1 official of the District of Columbia, appointed by the said Mayor: Provided, that nothing herein shall repeal existing law relating to the examination and licensing of master plumbers and gas fitters.

(c) *Leasing powers.* — The Mayor of the District of Columbia is authorized and empowered within his discretion to rent any building or land belonging to the District of Columbia or under the jurisdiction of the Mayor, or any available space therein, whenever such building or land, or space therein, is not then required for the purpose for which it was acquired, and to rent any used personal property belonging to the District of Columbia which is not then needed for the purpose for which it was acquired: Provided, that nothing contained in this subsection shall have the effect of changing in any manner Public Law No. 732, 74th Congress, entitled “An Act to authorize the operation of stands in federal buildings by blind persons, to enlarge the economic opportunities of the blind, and for other purposes”, approved June 20, 1936 (20 U.S.C. §§ 107-107f).

(d) *Issuance of revocable permits for construction of tunnels, and laying of conduits and pipes.* — The Mayor of the District of Columbia is authorized and empowered within his discretion to grant revocable permits upon such terms, conditions, bonds, and rentals as the Mayor may impose for the construction of tunnels, and the laying of conduits and pipes in the alleys, streets, and avenues in the District of Columbia under the jurisdiction of the Mayor.

(e) *Suspension of officers and employees.* — Except as otherwise provided, the Mayor of the District of Columbia is authorized and empowered within his discretion to suspend, with or without pay, any officer or employee appointed by him and, under such rules or regulations as he may prescribe, to delegate this power to any officers or employees of the District of Columbia.

(f) *Name and rename highways, buildings, public places and property.* — The Council of the District of Columbia is authorized and empowered within its discretion to name or change the name of a highway, circle, bridge, building,

park or other public place or property as provided in §§ 9-204.01 through 9-204.09:

(1) Repealed.

(2) The name of any person shall embrace the given name or names as well as the surname of such person and shall be so noted on the records of the Council of the District of Columbia and official records filed with the Surveyor of the District of Columbia.

(g) *Assess and collect fees for copies and transcripts of regulations, permits, certificates and records; disposition of moneys.* — The Mayor of the District of Columbia may fix, assess, and collect fees for copies of orders, regulations, permits, certificates, and transcripts of records furnished by the District of Columbia, including, but not limited to, transcripts of records of births and deaths. Such fees shall not exceed the reasonably estimated cost of providing such copies, certificates, and transcripts, and shall be deposited into the General Fund of the District of Columbia government.

(h) *Penalties for violation of rules and regulations.* — The Council of the District of Columbia is authorized and empowered within its discretion, where not otherwise specifically provided, to prescribe a penalty upon conviction of a violation of any rule or regulation authorized by §§ 1-301.01 to 1-301.05 and 1-301.21 by a fine of not more than \$300 or imprisonment of not more than 90 days.

(i) *Purchase and sale of maps and publications; issuance without charge; delegation of authority; payment of cost.* — The Mayor of the District of Columbia is authorized and empowered within his or her discretion:

(1) To purchase and sell maps and to sell copies and subscriptions of the District of Columbia Statutes-at-Large, the District of Columbia Register, the District of Columbia Municipal Regulations, other government publications, and other data and information ("government materials"), including binders for material, at prices the Mayor or his or her designated agent determines to be necessary to approximate the cost of the material, including the cost of distribution. The Mayor shall not charge the Council of the District of Columbia for copies or subscriptions of government materials or any other rule, regulation, or document that has general applicability and legal effect which the Council needs to perform its legislative responsibilities. All receipts from the sale of such material shall be deposited in the unrestricted fund balance of the General Fund of the District of Columbia;

(2) To issue such material without charge, in the discretion of the Mayor, to officers and employees of the governments of the United States and the District of Columbia, to states, territories, and possessions of the United States, local governmental units, and foreign governments; to institutions of research and learning; to applicants for, or holders of, particular licenses issued by the District of Columbia; and to any other person when it is determined by said Mayor or his designated agent or agents that it is in the best interest of the District of Columbia to furnish such material without charge; and to delegate to the heads of departments and agencies of the government of the District of Columbia the authority likewise to make the distribution authorized by this paragraph of such material as may be pur-

chased by the departments and agencies. Material to be distributed under the authority of this paragraph shall be supplied to the District of Columbia department or agency proposing to make such distribution, only upon payment by the department or agency of the cost thereof.

(j) *Placement of orders with federal departments and agencies; payment of cost; obligations upon appropriations.* — The Director of the Office of Contracting and Procurement is authorized and empowered in his discretion to place orders, if he determines it to be in the best interest of the District of Columbia, with any federal department, establishment, bureau, or office for materials, supplies, equipment, work, or services of any kind that such federal agency may be in a position to supply or be equipped to render, by contract or otherwise, and shall pay promptly by check to such federal agency, upon its written request, either in advance or upon furnishing or performance thereof, all or part of the estimated or actual costs thereof as determined by such department, establishment, bureau, or office as may be requisitioned; but proper adjustments on the basis of the actual costs of the materials, supplies or equipment furnished or work or services performed, paid for in advance, shall be made as may be agreed upon by the departments, establishments, bureaus, or offices concerned. Orders placed as provided in this subsection shall be considered as obligations upon appropriations in the same manner as orders or contracts placed with private contractors.

(k) *Placement of orders with departments, offices, or agencies of the District; payment of cost; obligations upon appropriations.* —

(1) The Mayor may authorize the heads of District departments, offices, and agencies to place orders with any other department, office, or agency of the District for materials, supplies, equipment, work, or services of any kind that the requisitioned department, office, or agency may be in a position to supply or equipped to render; provided, that the Chief Financial Officer shall submit quarterly to the Council and the Mayor the summary required by D.C. Official Code § 47-355.05(e), along with all Memoranda of Understanding between District agencies involving an exchange of materials, supplies, equipment, work, or services of any kind. The department, office, or agency placing any such orders shall either advance, subject to proper adjustment on the basis of actual cost, or reimburse, such department, office or agency the actual cost of materials, supplies, or equipment furnished or work or services performed as determined by such department, office, or agency as may be requisitioned. Orders placed as provided in this subsection shall be considered as obligations upon appropriations in the same manner as orders or contracts placed with private contractors.

(2) Repealed.

(l) *Leases or permits for use of public space over or under 9th Street Southwest.* — The Mayor of the District of Columbia is authorized and empowered in his discretion to enter into leases of, or to grant revocable permits for the use of, the public space over or under 9th Street Southwest in the District of Columbia to an extent not inconsistent with the use of such street by the general public for the purpose of travel, and in connection with any such lease or permit to impose such terms, including but not limited to the

deposit of bond or other security, and to provide for the payment of such rents or fees as the Mayor may, in his discretion, determine to be necessary or desirable, but the Mayor shall, in connection with entering into a lease for, or granting a permit for, the use of public space over said Street in the District of Columbia, provide as a condition of any such lease or permit that such space shall not be used by the lessee or permittee in such manner as to deprive any real property not owned by such lessee or permittee of its easements of light, air, and access.

(Dec. 20, 1944, 58 Stat. 819, ch. 611, § 1; July 2, 1958, 72 Stat. 292, Pub. L. 85-491, §§ 1, 2; Aug. 21, 1959, 73 Stat. 414, Pub. L. 86-178, § 2; Sept. 13, 1960, 74 Stat. 881, Pub. L. 86-743, § 1; Apr. 7, 1977, D.C. Law 1-109, § 2, 23 DCR 8739; Mar. 6, 1979, D.C. Law 2-153, § 5, 25 DCR 6960; June 14, 1980, D.C. Law 3-70, § 7(b), 27 DCR 1776; July 1, 1980, D.C. Law 3-75, § 3, 27 DCR 2277; Oct. 8, 1981, D.C. Law 4-34, § 29(d), 28 DCR 3271; Mar. 10, 1983, D.C. Law 4-201, § 707, 30 DCR 148; Mar. 7, 1991, D.C. Law 8-227, § 2, 38 DCR 224; July 23, 1994, D.C. Law 10-140, § 2, 41 DCR 3053; Apr. 12, 1997, D.C. Law 11-259, § 302, 44 DCR 1423; Oct. 22, 2009, D.C. Law 18-63, § 2, 56 DCR 6601; Apr. 8, 2011, D.C. Law 18-370, § 123, 58 DCR 1008; Sept. 14, 2011, D.C. Law 19-21, § 9020(a), 58 DCR 6226.)

Cross references. — Bonding of home improvement businesses, bond requirements, see § 47-2883.01 et seq.

General license law, bonding of licensees authorized to collect moneys, see § 47-2844.

Motor vehicles, installment sales, dealer bonds, limitation of actions, see § 50-603.

Private detectives, bonds, see § 5-121.01.

Public space rental and utilization, “vault” defined, see § 10-1101.01.

Section references. — This section is referred to in §§ 1-301.05 and 1-321.02.

Prior Codifications. — 1981 Ed., § 1-337. 1973 Ed., § 1-244.

Effect of amendments. — D.C. Law 18-63 rewrote the first sentence of subsec. (k)(1), which had previously read: “The Director of the Office of Contracting and Procurement is authorized and empowered in his discretion to authorize any department, office, or agency of the District of Columbia government, when it is determined to be in the best interest of the District of Columbia so to do, place orders with any other department, office, or agency of the District for materials, supplies, equipment, work, or services of any kind that such requisitioned department, office, or agency may be in a position to supply or equipped to render.”

D.C. Law 18-370, in subsec. (k)(1), substituted “the Chief Financial Officer shall submit quarterly to the Council and the Mayor the summary required by D.C. Official Code § 47-355.05(e), along with all Memoranda of Understanding between” for “the Mayor shall submit annually to the Council a report of all Memoranda of Understanding between”.

D.C. Law 19-21, in subsec. (i)(1), substituted “unrestricted fund balance of the General Fund of the District of Columbia” for “General Fund”.

Temporary Addition of Section. — Sections 2 to 7 of D.C. Law 16-216 added provisions to read as follows:

“Sec. 2. Purpose.

“This act authorizes the Mayor to take appropriate action to assure continuity in the execution of the laws and in the conduct of the legislative and executive affairs of the District of Columbia government. The purposes of this act are to provide for the orderly transfer of the:

“(1) Executive duties and responsibilities of the Executive Office of the Mayor with the expiration of the term of office of a Mayor and the assumption of those duties and responsibilities by a new Mayor; and

“(2) Legislative duties and responsibilities of the Chairman of the Council with the expiration of the term of office of a Chairman and the assumption of those duties and responsibilities by a new Chairman.

“Sec. 3. (a) The Mayor, in the discharge of his or her duties pursuant to section 422 of the District of Columbia Home Rule Act, approved December 23, 1973 (87 Stat. 790; D.C. Official Code § 1-204.22), may make available to the Mayor-elect and the Chairman-elect the following:

“(1) Office space, furniture, furnishings, office machines, and supplies, at whatever place or places within the District as the Mayor shall designate, at no cost to the Mayor-elect, the Chairman-elect, and the transition staff of each;

"(2) Compensation for the Mayor-elect's and Chairman-elect's transition staffs at a rate that does not exceed the rate prescribed pursuant to the District of Columbia Government Comprehensive Merit Personnel Act of 1973, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-601.1 et seq.) ('Merit Personnel Act'); provided, that any person who receives compensation as a member of transition staff under this paragraph does not hold a position in, or be considered to be an employee of, the District government.

"(3) Expenses for the procurement by the Mayor-elect and Chairman-elect of services of any expert or consultant, or organization thereof;

"(4) Travel expenses or subsistence allowances, as authorized by the Mayor-elect or Chairman-elect, including rental of a governmental or hired motor vehicle at a rate not to exceed the rate authorized pursuant to the Merit Personnel Act;

"(5) Expenses incurred by the Mayor-elect and Chairman-elect for printing, binding, and duplicating;

"(6) Postage or mailing expenses incurred by the Mayor-elect and Chairman-elect consistent with the Official Correspondence Regulations, effective April 7, 1977 (D.C. Law 1-118; D.C. Official Code § 2-701 et seq.); and

"(7) Expenses for communications equipment or service.

"(b)(1) No funds authorized by this act shall be expended in connection with any obligation incurred other than by the Mayor-elect or Chairman-elect.

"(2) Obligations may be incurred by the Mayor-elect or the Chairman-elect through the seventh day following the date of the inauguration of the Mayor-elect and Chairman-elect.

"Sec. 4. The Mayor-elect and Chairman-elect shall each file a report to be prepared with appropriate supporting documentation accounting for the expenditure of funds pursuant to this act. These reports shall be submitted to the Mayor, Council, and Chief Financial Officer no later than March 31, 2007.

"Sec. 5. Upon certification by the Chief Financial Officer that appropriated funds are available and that the reprogramming of those funds has been approved by the Council, there is hereby authorized the following amounts to be made available for transition costs:

"(1) Up to \$250,000 for the transition of the Mayor-elect; and

"(2) Up to \$150,000 for the transition of the Chairman-elect.

"Sec. 6. (a) For the purposes of this act, the term:

"(1) 'Chairman-elect' means the person who is certified as the successful candidate for the office of Chairman of the Council by the District of Columbia Board of Elections and Ethics

('Board of Elections and Ethics') following the general election held to determine the Chairman, or for the period of time between the general election and certification, the person announced and published by the Board of Elections and Ethics as the unofficial winner of the general election for Chairman with a margin of victory of at least 3% of the votes cast as reflected in the D.C. General Election 2006, November 7, 2006, Summary Report, Unofficial Results posted on the Board of Elections and Ethics website at www.dcboee.org.

"(2) 'Mayor-elect' means the person who is certified as the successful candidate for the office of Mayor by the Board of Elections and Ethics following the general election held to determine the Mayor, or for the period of time between the general election and certification, the person announced and published by the Board of Elections and Ethics as the unofficial winner of the general election for Mayor with a margin of victory of at least 3% of the votes cast as reflected in the D.C. General Election 2006, November 7, 2006, Summary Report, Unofficial Results posted on the Board of Elections and Ethics website at www.dcboee.org.

"Sec. 7. Pursuant to section 202(j)(2) and (3)(B) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, approved April 17, 1995 (Pub. L. No. 104-8; D.C. Official Code § 47-392.02(j)(2) and (3)(B)), an amount not to exceed \$2 million may be expended from the District of Columbia 2007 Operating Cash Reserve as follows:

"(1) An amount not to exceed \$1 million shall be for the Council of the District of Columbia for Council personnel and compensation costs; and

"(2) An amount not to exceed \$1 million shall be for the Council of the District of Columbia for the administration of central services."

Section 9(b) of D.C. Law 16-216 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) enactment, see §§ 2 to 7 of Mayor and Chairman of the Council Transition Revised Emergency Amendment Act of 2006 (D.C. Act 16-534, December 4, 2006, 53 DCR 9846).

For temporary (90 day) enactments, see §§ 2 to 7 of Mayor and Chairman of the Council Transition Revised Congressional Review Emergency Act of 2007 (D.C. Act 17-14, February 20, 2007, 54 DCR 1768).

For temporary (90 day) addition, see § 2 of Department of Parks and Recreation Budget Transparency Emergency Act of 2009 (D.C. Act 18-235, November 25, 2009, 56 DCR 9049).

For temporary (90 day) amendment of section, see § 123 of Fiscal Year 2011 Supplemental Budget Support Emergency Act of 2010 (D.C. Act 18-694, January 19, 2011, 58 DCR 662).

For temporary (90 day) amendment of section, see § 8002 of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) amendment of section, see § 8002 of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 1-109. — Law 1-109 was introduced in Council and assigned Bill No. 1-339, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 22, 1976 and December 7, 1976, respectively. Signed by the Mayor on January 4, 1977, it was assigned Act No. 1-194 and transmitted to both Houses of Congress for its review.

Legislative history of Law 2-153. — Law 2-153 was introduced in Council and assigned Bill No. 2-96, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 28, 1978 and December 12, 1978, respectively. Signed by the Mayor on December 29, 1978, it was assigned Act No. 2-319 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-70. — Law 3-70 was introduced in Council and assigned Bill No. 3-197, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on March 18, 1980 and April 1, 1980, respectively. Signed by the Mayor on April 25, 1980, it was assigned Act No. 3-176 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-75. — Law 3-75 was introduced in Council and assigned Bill No. 3-253, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on April 22, 1980 and May 6, 1980, respectively. Signed by the Mayor on May 14, 1980, it was assigned Act No. 3-184 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-34. — Law 4-34 was introduced in Council and assigned Bill No. 4-161, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 16, 1981 and June 30, 1981, respectively. Signed by the Mayor on July 20, 1981, it was assigned Act No. 4-58 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-201. — Law 4-201 was introduced in Council and assigned Bill No. 4-341, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on November 16, 1982, and December 28, 1982, respectively. Signed by the Mayor on December 28, 1982, it was assigned

Act No. 4-285 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-227. — Law 8-227 was introduced in Council and assigned Bill No. 8-480, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-310 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-140. — Law 10-140, the “Bond Surety Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-358, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on April 12, 1994, and May 3, 1994, respectively. Signed by the Mayor on May 18, 1994, it was assigned Act No. 10-245 and transmitted to both Houses of Congress for its review. D.C. Law 10-140 became effective on July 23, 1994.

Legislative history of Law 11-259. — For legislative history of D.C. Law 11-259, see Historical and Statutory Notes following § 1-301.91.

Legislative history of Law 18-63. — Law 18-63, the “Placement of Orders with District Departments, Offices, and Agencies Amendment Act of 2009”, as introduced in Council and assigned Bill No. 18-4, which was referred to the Committee on Government Operations and the Environment. The Bill was adopted on first and second readings on June 30, 2009, and July 14, 2009, respectively. Signed by the Mayor on July 28, 2009, it was assigned Act No. 18-159 and transmitted to both Houses of Congress for its review. D.C. Law 18-63 became effective on October 22, 2009.

Legislative history of Law 18-370. — Law 18-370, the “Fiscal Year 2011 Supplemental Budget Support Act of 2010”, was introduced in Council and assigned Bill No. 18-1100, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 7, 2010, and December 21, 2010, respectively. Signed by the Mayor on January 27, 2011, it was assigned Act No. 18-721 and transmitted to both Houses of Congress for its review. D.C. Law 18-370 became effective on April 8, 2011.

Legislative history of Law 19-21. — Law 19-21, the “Fiscal Year 2012 Budget Support Act of 2011”, was introduced in Council and assigned Bill No. 19-203, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 25, 2011, and June 14, 2011, respectively. Signed by the Mayor on July 22, 2011, it was assigned Act No. 19-98 and transmitted to both Houses of Congress for its review. D.C. Law 19-21 became effective on September 14, 2011.

References in text. — “Section 8 of Title 6, United States Code,” referred to in (b)(3), was repealed by Pub. L. 97-258, § 5(b), Sept. 13, 1982, 96 Stat. 1068, 1085.

New implementing regulations. — New implementing regulations: Pursuant to this section, the following new regulations were adopted in 1979: The “District of Columbia Electrical Licensing and Bonding Regulations Amendment Act of 1979” (D.C. Law 3-12, July 12, 1979, 25 DCR 10258).

Transfer of Functions. — The functions of the Insurance Department were transferred to the Department of Consumer and Regulatory Affairs by Reorganization Plan No. 1 of 1983, effective March 31, 1983.

Delegation of Authority. — Delegation of authority, see Mayor’s Order 90-68, April 30, 1990.

Delegation of contracting authority, see Mayor’s Order 90-178, November 19, 1990.

Delegation of authority under D.C. Law 8-227, the “Sale of Government Publications Amendment Act of 1990.”, see Mayor’s Order 91-98, June 5, 1991.

Delegation of authority under D.C. Law 8-227, the “Sale of Government Publication Amendment Act of 1990.”, see Mayor’s Order 93-199, November 19, 1993.

Delegation of authority under D.C. Law 8-227, the “Sale of Government Publications Amendment Act of 1990.”, see Mayor’s Order 94-236, November 9, 1994 (41 DCR 7593).

Delegation of authority under D.C. Law 8-227, the “Sale of Government Publications Amendment Act of 1990.”, see Mayor’s Order 96-40, March 18, 1996 (43 DCR 1801).

Amendment of Mayor’s Order 90-178, Delegation of Contracting Authority: See Mayor’s Order 96-83, June 20, 1996 (43 DCR

Mayor’s Orders. — See Mayor’s Order 92-153, December 1, 1992.

See Mayor’s Order 91-187, November 25, 1991.

Editor’s notes. — Designation of Mary Terrell—Arthur Elmes Parks: See Act of March 5, 1981, D.C. Law 3-151, 27 DCR 4905.

Designation of Blues Alley: See Act of March 5, 1981, D.C. Law 3-165, 27 DCR 5230.

Designation of Walter Houp Court: See Act of March 5, 1981, D.C. Law 3-168, 27 DCR 5365.

Designation of Community Park West: See Act of December 10, 1981, D.C. Law 4-56, 28 DCR 4650.

Designation of Ward Court: See Act of March 9, 1983, D.C. Law 4-168, 29 DCR 4987.

Designation of Anna J. Cooper Circle: See Act of March 9, 1983, D.C. Law 4-175, 29 DCR 5760.

Designation of Windom Place, Northwest: See Act of March 10, 1983, D.C. Law 4-192, 30 DCR 43.

Designation of Charles Richard Drew Bridge: See Act of May 3, 1983, D.C. Law 5-2, 30 DCR 1230.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402 (11, 12, 13, 14, 15) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Construction and application.
Electricity.
Plumbing.

Construction and application.

Where District of Columbia Commissioners had never exercised their enlarged authority under Additional Powers Act and as a consequence prior code section providing that District of Columbia shall be kept harmless from consequences of any and all acts of said licensee plumber during period covered by plumber’s indemnity bond was still in effect, purchasers of

property upon which sewer pipe was allegedly negligently installed by plumber could not bring action against plumber’s surety on indemnity bond which named only District of Columbia as obligee therein. D.C. Code 1951, §§ 1-244(b), 2-1404, 2-1405, 45-1405. *Bolten v. Clarke*, 125 A.2d 60, 1956 D.C. App. LEXIS 222 (Cr.App. 1956).

Electricity.

Order of District of Columbia Board of Commissioners requiring that application for any proposed electrical installation in which current carrying capacity exceeds 200 amperes or electrical potential exceeds 240 volts shall be

accompanied by plans and computations prepared and signed by professional electrical engineer bears no relationship to the factors of public health, safety or general welfare, results in discrimination against the electrical trade or business and inevitably increases cost to the consuming public for no lawful reason, and such order is illogical, unreasonable, arbitrary and capricious. D.C. Code 1951, §§ 1-244 et seq., 2-1001 et seq., 8-1801 et seq.; 18 U.S.C. § 2201. *Electrical Contractors Ass'n of District of Columbia v. McLaughlin*, 153 F.Supp. 653, 1957 U.S. Dist. LEXIS 3274 (D.D.C.1957).

Where section of Electrical Code providing for plans and specifications to be submitted by licensed electricians as part of permits for proposed electrical installation was in effect at time Congress enacted legislation regulating architects and engineers without repealing the Electrical Code sections, no repeal of Electrical Code section was intended by implication, and District of Columbia Board of Commissioner's orders amending Electrical Code section to provide that plans and specifications for installations in excess of 240 amperes or 240 volts should be prepared by a registered professional electrical engineer was without basis in law. D.C. Code 1951, §§ 1-244 et seq., 2-1001 et seq., 2-1801 et seq.; 18 U.S.C. § 2201. *Electrical Contractors Ass'n of District of Columbia v. McLaughlin*, 153 F.Supp. 653, 1957 U.S. Dist. LEXIS 3274 (D.D.C.1957).

District of Columbia regulations governing the electrical industry must be reasonable and have a tendency to promote the public health, safety or general welfare. *Electrical Contrac-*

tors Ass'n of District of Columbia v. McLaughlin, 153 F.Supp. 653, 1957 U.S. Dist. LEXIS 3274 (D.D.C.1957).

Plumbing.

Even if District of Columbia plumbing regulations which are designed to protect public health and which define legal duty running to any member of the public who might purchase property are violated, doctrine of negligence per se will be cautiously applied, with an eye to essential fairness, in action for alleged violation of such regulations, where plaintiffs in such action make no allegation or showing that their health is impaired or in imminent danger of being impaired. *Bolten v. Clarke*, 125 A.2d 60, 1956 D.C. App. LEXIS 222 (Cr.App. 1956).

Where property owners, who brought action based on alleged violation of plumbing regulations designed to protect public health failed to allege or show their health was impaired or would be impaired by such violation, and although plumbing regulations provided a procedure whereby defective house sewers must be repaired or replaced with appropriate penal sanctions against a defaulting plumber, plumber was neither notified of nor given opportunity to correct alleged defects in work done and plumber's first notice of alleged defective installation, which was approved by plumbing inspector, came when he was made defendant to action by property owners to recover damages for alleged defective installation, doctrine of negligence per se would not be applied. *Bolten v. Clarke*, 125 A.2d 60, 1956 D.C. App. LEXIS 222 (Cr.App. 1956).

§ 1-301.02. Appointment of contracting officers; powers; approval of contracts over \$3,000; void contracts; liquidated damage contracts. [Repealed].

Repealed.

(Dec. 20, 1944, 58 Stat. 821, ch. 611, § 2; Aug. 16, 1949, 63 Stat. 607, ch. 438; April 12, 1997, D.C. Law 11-259, § 404, 44 DCR 1423.)

Prior Codifications. — 1981 Ed., § 1-339. 1973 Ed., § 1-245.

Legislative history of Law 11-259. — For legislative history of D.C. Law 11-259, see Historical and Statutory Notes following § 1-301.91.

Mayor's Orders. — Amendment of Mayor's Order 90-178, Delegation of Contracting Authority; Delegation of Personnel Authority; and Establishment of Position of Administrator in

the Commission on Mental Health Services: See Mayor's Order 96-172, December 9, 1996 (43 DCR 6973).

Amendment of Mayor's Order 96-172, Establishing Position of Administrator in the Commission on Mental Health Services; Appointment of Interim Administrator; Duties of Administrator: See Mayor's Order 97-6, January 9, 1997 (44 DCR 357).

§ 1-301.03. Powers and duties of Director of Department of Licenses, Investigation and Inspections; delegation of authority.

The Mayor of the District of Columbia may transfer to, impose upon, and vest in the Director of the Department of Licenses, Investigation and Inspections of the District of Columbia all or any of the duties imposed upon, and all or any of the powers, rights, and authority vested in, the Inspector of Buildings of the District of Columbia, the Inspector of Plumbing of the District of Columbia, and the Electrical Engineer of the District of Columbia, by any law, and the Mayor may authorize the said Director of the Department of Licenses, Investigation and Inspections to delegate any or all of such powers to the Chief Engineer of the District of Columbia and to the Chief of Inspection of the District of Columbia and to their respective deputies when acting for them.

(Dec. 20, 1944, 58 Stat. 822, ch. 611, § 3.)

Cross references. — Construction and repairs of schools, authority to oversee, see § 38-402.

Section references. — This section is referred to in §§ 1-301.01 and 1-301.05.

Prior Codifications. — 1981 Ed., § 1-340. 1973 Ed., § 1-246.

Editor's notes. — Department of Inspections abolished: The Department of Inspections was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 55 of the Board of Commissioners, dated June 30, 1953, and amended August 13, 1953, and December 17, 1953, established under the direction and control of a Commissioner, a Department of Licenses and Inspections headed by a Director. The Order set out the purpose, organization, and functions of the new Department. The Order provided that all of the functions and positions of the following named organizations were transferred to the new Department of Licenses and Inspections: The Department of Inspections including the Engineering Section, the Building Inspection Section, the Electrical Section, the Elevator Inspection Section, the Fire Safety Inspection Section, the Plumbing Inspection Section, the Smoke and Boiler Inspection Section, and the Administrative Section, and similarly the Department of Weights, Measures and Markets, the License Bureau, the License Board, the License Committee, the Board of Special Appeals, the Board for the Condemnation of Dangerous and Unsafe Buildings, and the Central Permit Bureau. The Order provided that in accordance with the provisions of Reorganization Plan No. 5 of 1952, the named organizations were abolished. The executive functions of the Board of Commissioners

were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions vested in the Department of Licenses and Inspection by Reorganization Order No. 55 were transferred to the Director of the Department of Economic Development by Commissioner's Order No. 69-96, dated March 7, 1969. The Department of Economic Development was replaced by Mayor's Order No. 78-42, dated February 17, 1978, which Order established the Department of Licenses, Investigation and Inspections. The functions of the Department of Licenses, Investigations, and Inspections were transferred to the Department of Consumer and Regulatory Affairs by Reorganization Plan No. 1 of 1983, effective March 31, 1983.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 1-301.04. Settlement for real estate acquired by purchase or condemnation.

The Mayor of the District of Columbia may, in his discretion and when he deems such action to be in the public interest, effect settlement with owners of real estate authorized to be acquired by purchase or condemnation for District of Columbia purposes, through such title company or companies in the District of Columbia as may be designated by the Mayor, and to pay from appropriations available for the acquisition of such real estate reasonable fees to cover the cost of the services rendered by such title company or companies.

(Dec. 20, 1944, 58 Stat. 822, ch. 611, § 6.)

Section references. — This section is referred to in §§ 1-301.01 and 1-301.05.

Prior Codifications. — 1981 Ed., § 1-342. 1973 Ed., § 1-248.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 1-301.05. Power conferred by §§ 1-301.01 to 1-301.04 as additional.

The power and authorities conferred by §§ 1-301.01 to 1-301.04 are to be construed as in addition to and not by way of limitation of the powers now vested by law in the Mayor of the District of Columbia.

(Dec. 20, 1944, 58 Stat. 822, ch. 611, § 6.)

Section references. — This section is referred to in § 1-301.01.

Prior Codifications. — 1981 Ed., § 1-343. 1973 Ed., § 1-249.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

Part B

SUBPOENAS, ADMINISTRATION OF OATHS, AND DOCUMENTS CONCERNING POLICE OFFICERS AND FIREFIGHTERS.

§ 1-301.21. Subpoena power.

(a)(1) The Mayor of the District of Columbia shall have the power to issue subpoenas to compel witnesses to appear and testify and/or to produce all books, records, papers, or documents in any investigation or examination of any municipal matter with respect to functions transferred to the Mayor by Reorganization Plan No. 3 of 1967 or by the District of Columbia Home Rule Act (Chapter 2 of this title): Provided, that witnesses other than those employed by the District of Columbia subpoenaed to appear before the Mayor shall be entitled to reasonable fees as established by regulations issued by the Mayor of the District of Columbia, but said fees need not be tendered said witnesses in advance of their appearing and testifying and/or producing books, records, papers, or documents.

(2) For the purposes of this subsection, the term "municipal matter" means personnel matters concerning police officers and firefighters of the District of Columbia.

(b) Any willful false swearing on the part of any witness before the Mayor of the District of Columbia as to any material fact shall be deemed perjury and shall be punished in the manner prescribed by law for such offense.

(c) If any witness having been personally summoned shall neglect or refuse to obey the subpoena issued pursuant to subsection (a) of this section, then, in that event, the Mayor of the District of Columbia may report that fact to the Superior Court of the District of Columbia or one of the judges thereof and said Court, or any judge thereof, is empowered to compel obedience to said subpoena to the same extent as witnesses may be compelled to obey the subpoenas of that Court.

(d) The Mayor of the District of Columbia is authorized to administer oaths to witnesses summoned in any investigation or examination as set out in subsection (a) of this section.

(Sept. 26, 1980, D.C. Law 3-109, § 3, 27 DCR 3785; Apr. 30, 1988, D.C. Law 7-104, § 33, 35 DCR 147; June 3, 2011, D.C. Law 18-376, § 2, 58 DCR 944.)

Cross references. — Disposition of unclaimed property, reports and records, see § 41-130.

Family and medical leave, records, investigations, see § 32-508.

Long-term care ombudsman program, records, permitted access, see § 7-703.02.

Section references. — This section is referred to in § 1-301.01.

Prior Codifications. — 1981 Ed., § 1-338.

Effect of amendments. — D.C. Law 18-376, in subsec. (a), designated the existing text as par. (1) and added par. (2).

Temporary Amendment of Section. — Section 2 of D.C. Law 18-2 added subsec. (a-1) to read as follows:

"(a-1) Notwithstanding subsection (a) of this section, the Metropolitan Police Department or its agents shall not issue subpoenas in pursuance of criminal investigations."

Section 4(b) of D.C. Law 18-2 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2 of Metropolitan Police Department Subpoena Limitation Emergency Amendment Act of 2009 (D.C. Act 18-5, January 30, 2009, 56 DCR 1629).

Legislative history of Law 3-109. — Law 3-109 was introduced in Council and assigned Bill No. 3-291, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on July 15, 1980 and July 29, 1980, respectively. Signed by the Mayor on July 31, 1980, it was assigned Act No. 3-234 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-104. — Law 7-104 was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 24, 1987, and December 8, 1987, respectively. Signed by the Mayor on December 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

Legislative history of Law 18-376. — Law 18-376, the "Attorney General Subpoena Authority Authorization Amendment Act of 2010", was introduced in Council and assigned Bill

No. 18-1009, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on November 9, 2010, and December 7, 2010, respectively. Signed by the Mayor on January 20, 2011, it was assigned Act No. 18-712 and transmitted to both Houses of Congress for its review. D.C. Law 18-376 became effective on June 3, 2011.

Delegation of Authority. — Delegation of authority to the Inspector General to issue subpoenas & to administer oaths in any investigation or examination of municipal matters: See Mayor's Order 90-146, October 31, 1990.

Delegation of Authority to the Chief, Metropolitan Police Department to Issue Subpoenas and to Administer Oaths in Any Investigation of Examination of Municipal Matters, see Mayor's Order 2008-154, November 7, 2008 (55 DCR 12535).

Delegation of Authority to the Attorney General to Issue Subpoenas and to Administer Oaths in Any Criminal Investigation, see Mayor's Order 2009-5, January 16, 2009 (56 DCR 2019).

Editor's notes. — Delegation of subpoena power, see Mayor's Order 88-31, February 11, 1988.

Delegation of Subpoena Power to Implement the Parental Leave Act of 1994: See Mayor's Order 97-137, August 1, 1997 (44 DCR 4551).

§ 1-301.22. Administration of oaths.

The Mayor of the District of Columbia, the Chairman of the Council of the District of Columbia, and the members of the Council of the District of Columbia may administer oaths as part of their official responsibilities. No fee shall be collected for the administration of such oaths, and the power to administer such oaths shall not be utilized for personal purposes.

(May 19, 1982, D.C. Law 4-108, § 2, 29 DCR 1413.)

Cross references. — Council's authority, power to investigate, issue subpoenas, and administer oaths, see § 1-204.13.

Prior Codifications. — 1981 Ed., § 1-338.1.

Legislative history of Law 4-108. — Law 4-108, the "District of Columbia Administration of Oaths, Public Assistance Technical Clarification, and Police Service and Fire Service Sched-

ule Approval Act of 1982," was introduced in Council and assigned Bill No. 4-397, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on February 23, 1982 and March 9, 1982, respectively. Signed by the Mayor on March 26, 1982, it was assigned Act No. 4-169 and transmitted to both Houses of Congress for its review.

§ 1-301.23. Executive Secretary authorized to execute certain documents.

It shall be lawful for the Executive Secretary of the District of Columbia, or in his absence or upon his inability to act, such person as said Mayor may designate, when so directed by said Mayor, to execute in the name of the

District of Columbia or of said Mayor, by attaching thereto his signature as such Secretary and affixing when requisite the seal of said District, any deed, contract, pleading, lease, release, regulation, notice, or other paper, which prior to February 11, 1932, said Mayor was required to execute by subscribing thereto his signature: Provided, that prior to such signing, and sealing if requisite, said deed, contract, pleading, lease, release, regulation, notice, or other paper shall first have been considered and approved by said Mayor, and evidence of such consideration and approval shall be reduced to writing and recorded in the minutes of said Mayor, which minutes shall thereafter be signed by said Mayor.

(Feb. 11, 1932, 47 Stat. 48, ch. 40.)

Cross references. — Industrial home school site, instruments of transfer, see § 10-803.

Prior Codifications. — 1981 Ed., § 1-303. 1973 Ed., § 1-214.

Editor's notes. — Office of Secretary to Board of Commissioners abolished: The Office of the Secretary to the Board of Commissioners of the District of Columbia was abolished and the functions thereof transferred to the Board of Commissioners by Reorganization Plan No. 5 of 1952. Reorganization Order No. 41 of the Board of Commissioners, dated June 23, 1953, established as part of the Executive Office of the Board of Commissioners under the direction and control of the Board, an Office of the Secretary to the Board of Commissioners to perform ministerial duties for the Board. The Order described the purpose and functions of the Office of Secretary, and provided that the functions and positions of the previously existing Office of the Secretary to the Board be transferred to the new Office, and that the previously existing Office of the Secretary be abolished. This Order was issued pursuant to Reorganization Plan No. 5 of 1952. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Organization Order No. 2, Commissioner's Order No. 67-23, dated December 13, 1967, as amended, established

within the Executive Office of the Commissioner, a Secretariat headed by an Executive Secretary. The Order transferred to the Secretariat certain functions, including the duties, powers and authorities of all officers and employees performing such functions and assigned to the Office of the Secretary as it existed immediately prior to December 13, 1967, and revoked all other orders inconsistent therewith.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

Part C

THE COUNCIL.

§ 1-301.41. Definitions.

(a) "Council" shall mean the Council of the District of Columbia.

(b) "Legislative duties" shall include the responsibilities of each member of the Council in the exercise of such member's functions as a legislative

representative, including but not limited to: Everything said, written or done during legislative sessions, meetings, or investigations of the Council or any committee of the Council, and everything said, written, or done in the process of drafting and publishing legislation and legislative reports.

(c) "Threatening letter or communication" shall mean any letter or communication which reasonably indicates an earnest intention or determination to inflict injury upon someone or something of value.

(June 8, 1976, D.C. Law 1-65, § 2, 22 DCR 7150.)

Prior Codifications. — 1981 Ed., § 1-222.
1973 Ed., § 1-141a.

Legislative history of Law 1-65. — Law 1-65 was introduced in Council and assigned Bill No. 1-34, which was referred to the Committee on the Judiciary and Criminal Law. The

Bill was adopted on first and second readings on January 27, 1976 and February 24, 1976, respectively. Signed by the Mayor on March 22, 1976, it was assigned Act No. 1-97 and transmitted to both Houses of Congress for its review.

CASE NOTES

ANALYSIS

Administrative duties.
Legislative duties.

Administrative duties.

District of Columbia council member was acting in administrative, not legislative capacity in terminating legislative researcher, and thus was not entitled to absolute immunity from § 1983 liability to researcher. 42 U.S.C. § 1983. *Gross v. Winter*, 876 F.2d 165, 1989 U.S. App. LEXIS 7438 (C.A.D.C. 1989).

Legislative duties.

Communications between District of Columbia mayor and councilmember regarding District of Columbia employee's demotion and termination were not protected by the District of Columbia's Speech or Debate Clause; such communications did not serve the purpose of gathering information to guide a legislative vote, and concerned an executive, rather than legislative, decision. *Payne v. District of Columbia*, 2012 WL 1662524 (2012).

District of Columbia city council members were immunized from claims for damages arising from introduction of two bills that would have abolished District Lottery & Charitable Games Control Board. D.C. Code 1981, § 1-222(b). *Brewer v. D.C. Fin. Responsibility & Mgmt. Assistance Auth.*, 953 F. Supp. 406, 1997

U.S. Dist. LEXIS 892 (1997), affirmed without opinion by 132 F.3d 1480, 328 U.S. App. D.C. 134, 1997 U.S. App. LEXIS 40261 (1997).

Conversations that former and current District of Columbia council members had with the District's Chief Financial Officer (CFO), a member of the executive branch of the District government, regarding District's lottery contract were not protected legislative activity under the District of Columbia's Speech or Debate Clause, and thus former District official could depose the council members regarding these conversations in his suit alleging he was terminated, in violation of the Constitution and District of Columbia law, due in part to his resistance to the council members' pressure to cancel a lottery contract award; the conversations involved the members' attempts to cajole or exhort the CFO. *Payne v. District of Columbia*, 279 F.R.D. 1, 2011 U.S. Dist. LEXIS 128509 (2011).

District of Columbia Council member enjoyed immunity from citizen's civil action under the District of Columbia Speech and Debate Clause; citizen accused council member of "dereliction of duties" because she supported a particular bill and because she refused to repeal a municipal regulation, and counsel member's conduct at issue was within the sphere of legislative activity that was protected. *Dorsey v. District of Columbia*, 917 A.2d 639, 2007 D.C. App. LEXIS 78 (2007).

§ 1-301.42. Legislative immunity.

For any speech or debate made in the course of their legislative duties, the members of the Council shall not be questioned in any other place.

(June 8, 1976, D.C. Law 1-65, § 3, 22 DCR 7151.)

Prior Codifications. — 1981 Ed., § 1-223.
1973 Ed., § 1-141b.
Legislative history of Law 1-65. — For

legislative history of D.C. Law 1-65, see Historical and Statutory Notes following § 1-301.41.

CASE NOTES

ANALYSIS

Construction and application.
Construction with federal law.
Documents.
Federal law.
First Amendment rights.
In general.
Jurisdiction.
Legislative duties.
Purpose.
Section 1983 claims.
Validity.
Whistleblower actions.

Construction and application.

District of Columbia council member was not entitled to absolute legislative immunity from terminated employee's common-law claims under District's local speech or debate statute, which provided no broader protection than speech or debate clause of Federal Constitution. D.C. Code 1981, § 1-223; U.S. Const. Art. 1, § 6, cl. 1. *Gross v. Winter*, 876 F.2d 165, 1989 U.S. App. LEXIS 7438 (C.A.D.C. 1989).

Activities that are political in nature, rather than legislative, are outside Speech and Debate Clause of United States Constitution and District of Columbia Speech or Debate statute, e.g. news releases and speeches delivered outside Congress. *Williams v. Johnson*, 597 F.Supp.2d 107, 2009 U.S. Dist. LEXIS 12343 (2009).

For purposes of construing privilege conferred by Speech and Debate Clause of United States Constitution or District of Columbia Speech or Debate statute, legislator and his aide are treated as one. *Williams v. Johnson*, 597 F.Supp.2d 107, 2009 U.S. Dist. LEXIS 12343 (2009).

District of Columbia's speech and debate statute excludes inquiry into the motivation for acts that occur in the regular course of the legislative process. *Chang v. United States*, 512 F.Supp.2d 62, 2007 U.S. Dist. LEXIS 73068 (2007).

Immunity under the District of Columbia's speech and debate statute extends beyond council members to legislative aids, both present or former. *Chang v. United States*, 512 F.Supp.2d 62, 2007 U.S. Dist. LEXIS 73068 (2007).

Scope of immunity under District of Columbia's speech and debate statute only extends to conduct which is within the sphere of legitimate legislative activity. *Chang v. United States*, 512 F.Supp.2d 62, 2007 U.S. Dist. LEXIS 73068 (2007).

District of Columbia's speech and debate statute was intended to be interpreted liberally so as to protect legislative activities beyond the mere confines of the Council Chambers or a committee meeting place. *Chang v. United States*, 512 F.Supp.2d 62, 2007 U.S. Dist. LEXIS 73068 (2007).

Case law interpreting the United States Constitution's Speech and Debate Clause is pertinent to construing the District of Columbia's analogous speech and debate statute. *Alliance for Global Justice v. District of Columbia*, 437 F.Supp.2d 32, 2006 U.S. Dist. LEXIS 39308 (2006).

District of Columbia speech or debate statute was intended to be interpreted liberally, so as to protect genuine legislative functions which are exercised beyond mere confines of city council chambers or committee meeting place. D.C. Code 1981, § 1-223. *Dominion Cogen, Inc. v. District of Columbia*, 878 F. Supp. 258, 1995 U.S. Dist. LEXIS 2539 (1995).

Scope of legislative immunity under District of Columbia speech or debate statute only extends to conduct which is within legislative sphere; city council members are not immune from liability for acts which are not taken in their legislative capacity. D.C. Code 1981, § 1-223. *Dominion Cogen, Inc. v. District of Columbia*, 878 F. Supp. 258, 1995 U.S. Dist. LEXIS 2539 (1995).

Legislators may not be deposed or made to answer interrogatories in an attempt to disclose their individual motivations for seeking a taking. *Franco v. Nat'l Capital Revitalization Corp.*, 930 A.2d 160, 2007 D.C. App. LEXIS 398 (2007).

District of Columbia Council member enjoyed immunity from citizen's civil action under the District of Columbia Speech and Debate Clause; citizen accused council member of "dereliction of duties" because she supported a particular bill and because she refused to repeal a municipal regulation, and counsel member's conduct at issue was within the sphere of legislative activity that was protected. *Dorsey v. District of Columbia*, 917 A.2d 639, 2007 D.C. App. LEXIS 78 (2007).

Construction with federal law.

Where Speech and Debate Clause of United States Constitution or District of Columbia Speech or Debate statute apply, immunity they confer is absolute. *Williams v. Johnson*, 597 F.Supp.2d 107, 2009 U.S. Dist. LEXIS 12343 (2009).

Documents.

Because legislative immunity under the Dis-

trict of Columbia's speech and debate statute not only prohibits compelled testimony, but also the compelled production of documents, documents requested pursuant to a subpoena duces tecum may be protected. *Chang v. United States*, 512 F.Supp.2d 62, 2007 U.S. Dist. LEXIS 73068 (2007).

Documents in possession of special counsel appointed by District of Columbia committee to investigate policing of mass demonstrations, documents relied upon by special counsel in preparing public speech on the investigation, and documents related to her communications with the committee regarding her speech were shielded from production, in action brought against the District and federal government by demonstrators who were arrested at mass demonstration, pursuant to the legislative immunity accorded to special counsel under District of Columbia's speech and debate statute; documents were collected and used during the course of the committee's investigation. *Chang v. United States*, 512 F.Supp.2d 62, 2007 U.S. Dist. LEXIS 73068 (2007).

Federal law.

Case law interpreting federal constitutional speech or debate clause is pertinent in construing District of Columbia's analogous speech or debate statute. U.S.C. Const. Art. 1, § 6, cl. 1; D.C. Code 1981, § 1-223. *Dominion Cogen, Inc. v. District of Columbia*, 878 F. Supp. 258, 1995 U.S. Dist. LEXIS 2539 (1995).

Broad absolute immunity afforded congressional defendants under speech and debate clause as delineated in *Browning* does not extend to District of Columbia council member; principle of separation of powers applicable to members of Congress is inapplicable to analysis of absolute legislative immunity for a city council member in federal courts as local legislature and federal judiciary are not coordinate, equal branches of government. U.S. Const. Art. 1, § 6, cl. 2. *Gross v. Winter*, 692 F.Supp. 1420, 1988 U.S. Dist. LEXIS 8896 (1988).

First Amendment rights.

Claim by terminated employee of District of Columbia council member for retaliatory dismissal was not, as matter of law, outweighed by government's interest in its efficient operation; employee's claim that her First Amendment rights were violated when she was terminated after speaking with anti-defamation league regarding denial of two-day holiday to observe Rosh Hashannah was important First Amendment issue. U.S. Const. Amend. 1. *Gross v. Winter*, 692 F.Supp. 1420, 1988 U.S. Dist. LEXIS 8896 (1988).

In general.

Purpose for which material or testimony protected by Speech and Debate Clause of United States Constitution or District of Columbia

Speech or Debate statute is sought is irrelevant to application of legislative immunity. *Williams v. Johnson*, 597 F.Supp.2d 107, 2009 U.S. Dist. LEXIS 12343 (2009).

Jurisdiction.

Federal court had pendent jurisdiction to consider terminated employee's common-law claims of wrongful discharge in violation of public policy, slander and intentional infliction of emotional distress against District of Columbia council member who was former employer; common-law claims closely paralleled employee's First Amendment claims and thus, defense of common-law claims in federal court would not impose any additional burdens on employer. U.S. Const. Amend. 1. *Gross v. Winter*, 692 F.Supp. 1420, 1988 U.S. Dist. LEXIS 8896 (1988).

Legislative duties.

District of Columbia's speech and debate statute did not shield the District from request that it produce a representative who was not a member of the legislative branch to testify at deposition based on knowledge collectively held by the District as a municipality, as to District's knowledge and views of the investigation and report on the policing of mass demonstrations and about District's policies, such as policies relating to the arrest of individuals for civil pedestrian infractions, in protestors' civil rights action under §§ 1983 against District, alleging that their constitutional rights were violated when they were arrested during demonstrations surrounding World Bank meetings. *Alliance for Global Justice v. District of Columbia*, 437 F.Supp.2d 32, 2006 U.S. Dist. LEXIS 39308 (2006).

City council members' alleged improper pressuring of agencies to delay issuance of permits and to demand redundant regulatory reviews, decisions to hold public hearings, and introduction of legislation fell within scope of legislative immunity under District of Columbia speech or debate statute in action brought by cogenerators seeking to construct cogeneration plant against District of Columbia officials for violation of due process, unconstitutional impairment of contracts, and tortious interference with contractual and economic relations, alleging concerted effort to improperly prevent cogenerators from building and operating facility. D.C. Code 1981, § 1-223. *Dominion Cogen, Inc. v. District of Columbia*, 878 F. Supp. 258, 1995 U.S. Dist. LEXIS 2539 (1995).

Conversations that former and current District of Columbia council members had with the District's Chief Financial Officer (CFO), a member of the executive branch of the District government, regarding District's lottery contract were not protected legislative activity under the District of Columbia's Speech or

Debate Clause, and thus former District official could depose the council members regarding these conversations in his suit alleging he was terminated, in violation of the Constitution and District of Columbia law, due in part to his resistance to the council members' pressure to cancel a lottery contract award; the conversations involved the members' attempts to cajole or exhort the CFO. *Payne v. District of Columbia*, 279 F.R.D. 1, 2011 U.S. Dist. LEXIS 128509 (2011).

Purpose.

District of Columbia Speech or Debate statute is interpreted liberally so as to protect genuine legislative functions. *Williams v. Johnson*, 597 F.Supp.2d 107, 2009 U.S. Dist. LEXIS 12343 (2009).

Speech and Debate Clause of United States Constitution, and District of Columbia Speech or Debate statute, where they apply, shields legislators from lawsuits relating to legitimate legislative activities, as well as from being compelled to testify or provide other discovery in lawsuits brought by or against third parties. *Williams v. Johnson*, 597 F.Supp.2d 107, 2009 U.S. Dist. LEXIS 12343 (2009).

Legislator's acquiring of information is within ambit of District of Columbia Speech or Debate statute and Speech and Debate Clause of United States Constitution, regardless of whether conducted formally or informally. *Williams v. Johnson*, 597 F.Supp.2d 107, 2009 U.S. Dist. LEXIS 12343 (2009).

District of Columbia's speech and debate statute was intended to be interpreted liberally so as to protect legislative activities beyond the mere confines of the Council Chambers or a committee meeting place. *Alliance for Global Justice v. District of Columbia*, 437 F.Supp.2d 32, 2006 U.S. Dist. LEXIS 39308 (2006).

Section 1983 claims.

District of Columbia speech or debate statute clothes city council members with immunity from lawsuits, including § 1983 claims, for conduct undertaken in their legislative capacities. 42 U.S.C. § 1983; D.C. Code 1981, § 1-223. *Dominion Cogen, Inc. v. District of Columbia*, 878 F. Supp. 258, 1995 U.S. Dist. LEXIS 2539 (1995).

Claims of cogenerators seeking to construct cogeneration plant against city council member were not barred by legislative immunity under District of Columbia speech or debate statute in § 1983 action for due process violation, unconstitutional impairment of contracts, and tortious interference with contractual and economic relations, where, to extent complaint alleged member sought to interfere with regulatory building permit process by using his influence to cajole or intimidate executive

branch members, such acts would not fall within legitimate scope of legislative activity, and complaint raised fact issue as to whether member acted outside legislative sphere. U.S. Const. Art. 1, § 10, cl. 1; Amend. 14; 42 U.S.C. § 1983; D.C. Code 1981, § 1-223. *Dominion Cogen, Inc. v. District of Columbia*, 878 F. Supp. 258, 1995 U.S. Dist. LEXIS 2539 (1995).

Validity.

District of Columbia's investigation and report on the policing of mass demonstrations and about District's policies, such as policies relating to the arrest of individuals for civil pedestrian infractions, was undertaken within the "legislative sphere," and, thus, under District of Columbia's speech and debate statute, District could not be compelled, in protestors' civil rights action under §§ 1983 against District, alleging that their constitutional rights were violated when they were arrested during demonstrations surrounding World Bank meetings, to produce a council member to testify at deposition based on knowledge collectively held by the District as a municipality, as to District's knowledge and views of the investigation and report. *Alliance for Global Justice v. District of Columbia*, 437 F.Supp.2d 32, 2006 U.S. Dist. LEXIS 39308 (2006).

Whistleblower actions.

Under District of Columbia Speech or Debate statute, District councilman's aide was entitled to absolute immunity from subpoena issued by District employee, in her Whistleblower Protection Act (WPA) suit against her supervisors alleging retaliation for employee's statements at council meeting and at private meeting with councilman and aide; subpoena sought testimony and documents directly relating to councilman's alleged investigation into employing agency's possible wrongdoing, which was within legislative sphere, and aide shared in same immunity as councilman as to investigation. *Williams v. Johnson*, 597 F.Supp.2d 107, 2009 U.S. Dist. LEXIS 12343 (2009).

Under District of Columbia Speech or Debate statute, District councilman was entitled to absolute immunity from subpoena issued by District employee, in her Whistleblower Protection Act (WPA) suit against her supervisors alleging retaliation for employee's statements at council meeting and at private meeting with councilman; subpoena sought testimony and documents directly relating to councilman's alleged investigation into employing agency's possible wrongdoing, and councilman's activities in relation to that investigation were within sphere of protected legislative activities, even if investigation was informal. *Williams v. Johnson*, 597 F.Supp.2d 107, 2009 U.S. Dist. LEXIS 12343 (2009).

§ 1-301.43. Obstruction of Council proceedings and investigations; penalty.

Whoever, corruptly or by threat or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any witness in any proceeding pending before the Council, or in connection with any inquiry or investigation being had by the Council, or any committee of the Council, or any joint committee of the Council; or whoever injures any party or witness in his person or property on account of his attending or having attended such proceeding, inquiry, or investigation, or on account of his testifying or having testified to any matter pending therein; or whoever willfully removes from any place, conceals, destroys, mutilates, alters, or by other means falsifies any documentary material which is the subject of a subpoena lawfully issued by the Council, or any committee of the Council; or whoever, corruptly, or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which such proceeding is being had before the Council, or the due and proper exercise of the power of inquiry under which such inquiry or investigation is being had by the Council, or any committee of the Council, or any joint committee of the Council; shall be fined not more than \$2,000 or imprisoned not more than 2 years, or both.

(June 8, 1976, D.C. Law 1-65, § 4, 22 DCR 7151.)

Prior Codifications. — 1981 Ed., § 1-224.
1973 Ed., § 1-141c.

Legislative history of Law 1-65. — For

legislative history of D.C. Law 1-65, see Historical and Statutory Notes following § 1-301.41.

CASE NOTES

ANALYSIS

Witnesses.

Wrongful discharge.

Witnesses.

Captain of District of Columbia Fire and Emergency Medical Services Department (FEMS) was not a witness in a proceeding or a participant in a city council investigation, and therefore, policy in District of Columbia code making it unlawful to intimidate or impede a witness was not violated by captain's termination for allegedly raising concerns about waste and fraud by officials, as required to assert wrongful discharge for her claims against District of Columbia for negligent hiring, training, and supervision. *Coleman v. District of Columbia*, 828 F.Supp.2d 87, 2011 U.S. Dist. LEXIS 140500 (2011).

Wrongful discharge.

Former employee's allegations that he was fired for refusing to participate in political activities prohibited by federal tax laws and regulations were sufficient to state claim for

wrongful discharge in violation of public policy under District of Columbia law. *Riggs v. Home Builders Inst.*, 203 F.Supp.2d 1, 2002 U.S. Dist. LEXIS 16329 (2002).

Policy set forth in federal tax laws and regulations of protecting against abuse of public treasury by utilizing public funds for partisan activity was sufficiently clear mandate of public policy to support claim for wrongful discharge in violation of public policy under District of Columbia law. *Riggs v. Home Builders Inst.*, 203 F.Supp.2d 1, 2002 U.S. Dist. LEXIS 16329 (2002).

Former employee's allegations that former employer, executives for employer and related organization combined together, agreed and conspired to terminate his employment for his refusal to advance their political and legislative agenda in violation of federal tax laws and regulations were sufficient to state claim for civil conspiracy under District of Columbia law. *Riggs v. Home Builders Inst.*, 203 F.Supp.2d 1, 2002 U.S. Dist. LEXIS 16329 (2002).

Former employee's allegations that trustee for former employee fell within exception to

corporate privilege when he conspired with others to terminate his employment for his refusal to advance their political and legislative agenda in violation of federal tax laws and regulations were sufficient to state claim for civil conspiracy under District of Columbia law. *Riggs v. Home Builders Inst.*, 203 F.Supp.2d 1, 2002 U.S. Dist. LEXIS 16329 (2002).

Alleged firing of nurse for testifying before Council of District of Columbia could support cause of action under termination in violation of public policy exception to at will employment doctrine. D.C. Code 1981, § 1-224. *Carl v. Children's Hosp.*, 702 A.2d 159, 1997 D.C. App. LEXIS 235 (1997).

§ 1-301.44. Independence established and recognized.

(a) The Council of the District of Columbia ("Council") administratively establishes itself, as authorized in subchapter IV of Chapter 2 of this title, as an independent and coordinate branch of the District of Columbia government.

(b) The Council recognizes the principle of separation of powers in the structure of the District of Columbia government.

(c) The Council shall, following receipt of the report of the study committee established by § 3, adopt such acts and resolutions to implement the organizational and administrative independence of the Council.

(July 24, 1982, D.C. Law 4-127, § 2, 29 DCR 2396.)

Prior Codifications. — 1981 Ed., § 1-227.1.

Legislative history of Law 4-127. — Law 4-127, the "Council of the District of Columbia Independence Act of 1982," was introduced in Council and assigned Bill No. 4-240, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on March 9, 1982 and March 23, 1982, respectively. Signed by the Mayor on June 1, 1982, it was assigned Act No. 4-192 and transmitted to both Houses of Congress for its review.

References in text. — "Section 3", referred to in subsection (c) of this section, is § 3 of D.C. Law 4-127.

Editor's notes. — Study committee established: Section 3 of D.C. Law 4-127 provided for the establishment of a 5-member study committee to study the organizational and administrative independence of the Council as a coordinate branch of the District of Columbia government. Section 4 of D.C. Law 4-127 outlined the responsibilities of the study committee.

§ 1-301.44a. Independence of legislative branch information technology.

(a) No person, including an employee or contractor of the Office of the Chief Technology Officer, or individual employed by or acting on behalf of an official of the Executive branch of the District of Columbia government, shall monitor, access, review, intercept, obtain, use, or disclose to any person or entity a record or electronic communication of a legislative branch agency without the prior express written consent of the Chairman of the Council or the District of Columbia Auditor for their electronic communications.

(b) For the purposes of this section and § 1-301.44b the term:

(1) "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data, voice, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system, including electronic mail, telecommunications, and wireless or wired network communications.

(2) "Legislative branch agency" means the Council of the District of Columbia and the District of Columbia Auditor.

(c) Persons violating this section shall be subject to a fine of not more than

\$10,000 or imprisonment of not more than 5 years, or both; provided, that this section shall not apply to the contents of any communication that has been disclosed publicly by the legislative branch agency.

(July 24, 1982, D.C. Law 4-127, § 2a, as added Mar. 3, 2010, D.C. Law 18-111, § 1101, 57 DCR 181.)

Emergency legislation. — For temporary (90 day) addition, see § 1101 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) addition, see § 1101 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 18-111. — For Law 18-111, see notes following § 1-301.181.

Short title. — Short title: Section 1100 of D.C. Law 18-111 provided that subtitle K of title I of the act may be cited as the “Independence of Legislative Branch Information Technology and Personnel Authority Amendment Act of 2009”.

Delegation of Authority. — Delegation of Rulemaking Authority for DC One Card Fees, see Mayor’s Order 2011-119, July 14, 2011 (58 DCR 6112).

§ 1-301.44b. Legislative branch information technology acquisition.

(a) A legislative branch agency may invest in, acquire, use, and manage, independent of the Executive branch, information technology and telecommunications systems and resources, including hardware, software, and contract services.

(b) A legislative branch agency may, independent of the Executive branch, establish, acquire, maintain, and manage electronic mail messaging systems and services, internet access services, and information technology security systems and services.

(July 24, 1982, D.C. Law 4-127, § 2b, as added Mar. 3, 2010, D.C. Law 18-111, § 1101, 57 DCR 181.)

Emergency legislation. — For temporary (90 day) addition, see § 1101 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) addition, see § 1101

of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 18-111. — For Law 18-111, see notes following § 1-301.181.

§ 1-301.44c. Disclosure of information to the Council; District of Columbia Auditor; conditions on disclosure.

(a) Notwithstanding any other provision of law, no document or information that the following persons or entities have requested for the purpose of performing their official duties shall be withheld by a subordinate or independent agency, instrumentality, board, or commission, or by an official or employee thereof, based upon a statutory or regulatory provision restricting or prohibiting disclosure to the general public:

- (1) The Council;

- (2) A Council committee;
- (3) A member of the Council acting in an official capacity;
- (4) The District of Columbia Auditor; or
- (5) An employee of the Office of the District of Columbia Auditor.

(b) Documents or information obtained under subsection (a) of this section shall remain subject to the underlying statutory restrictions and shall not be disclosed to the public or any third party unless permitted by that statute.

(c) Documents or information shall not be disclosed to the Council under subsection (a) of this section if:

(1) A District statute expressly prohibits disclosure of the information to the Council; or

(2) A federal law or regulation requires that the information be withheld from disclosure to the Council in such a manner that it leaves no discretion on the issue.

(d) Disclosure of documents or information under subsection (a) of this section shall not constitute a waiver of any privilege or exemption that otherwise could lawfully be asserted by the District of Columbia to prevent disclosure to the general public or in a judicial or administrative proceeding.

(July 24, 1982, D.C. Law 4-127, § 2a, as added Mar. 11, 2010, D.C. Law 18-119, § 2, 57 DCR 906.)

Legislative history of Law 18-119. — Law 18-119, the “Disclosure of Information to the Council Amendment Act of 2009”, was introduced in Council and assigned Bill No. 18-491, which was referred to the Committee on the Whole. The bill was adopted on first and second readings on December 1, 2009, and December

15, 2009, respectively. Approved without signature by the Mayor on January 14, 2010, it was assigned Act No. 18-267 and transmitted to both Houses of Congress for its review. D.C. Law 18-119 became effective on March 11, 2010.

§ 1-301.45. Construction of terms set forth in acts and resolutions.

For the purposes of any act or resolution of the Council of the District of Columbia, unless specifically provided otherwise:

(1) Words importing the singular include and apply to several persons, parties, or things.

(2) Words importing the plural include the singular.

(3) With regard to resolutions, words importing 1 gender include and apply to the other gender as well.

(4) Words used in the present tense include the future as well as the present.

(5) The words “person” and “whoever” include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.

(6) “Officer” includes any person authorized by law to perform the duties of the office.

(7) “Signature” or “subscription” includes a mark when the person making it intended that mark as such.

(8) “Oath” includes affirmation, and “sworn” includes affirmed.

(9) “Writing” includes printing and typewriting and reproductions of visual symbols by photographing, multigraphing, mimeographing, manifold-ing, or otherwise.

(10) The words “include” and “including” mean “includes, but not limited to” and “including, but not limited to”.

(11) Words such as “stepparent,” “stepmother,” “stepfather,” “stepchild,” “stepsister,” and “stepbrother” are used to indicate a category of a family step-relationship created when an individual who is a parent of a child:

(A) Marries an individual who is not a parent of that child; or

(B) Becomes a domestic partner of an individual who is not a parent of that child by registering the domestic partnership pursuant to § 32-702.

(Sept. 23, 1975, D.C. Law 1-17, § 2, 22 DCR 1990; June 4, 1982, D.C. Law 4-111, § 2(b), 29 DCR 1684; Apr. 7, 2006, D.C. Law 16-91, § 105, 52 DCR 10637; Sept. 12, 2008, D.C. Law 17-231, § 2, 55 DCR 6758.)

Cross references. — General rules of construction, see § 45-601 et seq.

Woodrow Wilson Bridge and Tunnel Compact, see § 9-1115.03.

Prior Codifications. — 1981 Ed., § 1-230.

1973 Ed., § 1-146a.

Effect of amendments. — D.C. Law 16-91 added par. (10).

D.C. Law 17-231 added par. (11).

Legislative history of Law 1-17. — Law 1-17 was introduced in Council and assigned Bill No. 1-58, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 29, 1975 and May 13, 1975, respectively. Signed by the Mayor on June 19, 1975, it was assigned Act No. 1-23 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-111. — Law 4-111 was introduced in Council and assigned Bill No. 4-374, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on March 9, 1982 and March 23, 1982, respectively. Signed by the Mayor on April 12, 1982, it was assigned Act

No. 4-174 and transmitted to both Houses of Congress for its review.

Legislative history of Law 16-91. — Law 16-91, the “Technical Amendments Act of 2005”, was introduced in Council and assigned Bill No. 16-477 which was referred to the Committee on the Whole. The Bill was adopted on first and second readings on November 1, 2005, and November 15, 2005, respectively. Signed by the Mayor on November 30, 2005, it was assigned Act No. 16-212 and transmitted to both Houses of Congress for its review. D.C. Law 16-91 became effective on April 7, 2006.

Legislative history of Law 17-231. — Law 17-231, the “Omnibus Domestic Partnership Equality Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-135, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on April 1, 2008, and May 6, 2008, respectively. Signed by the Mayor on June 6, 2008, it was assigned Act No. 17-403 and transmitted to both Houses of Congress for its review. D.C. Law 17-231 became effective on September 12, 2008.

CASE NOTES

Gender.

Adoption of gender rule of construction did not require interpretation of marriage statute to authorize same-sex marriages. D.C. Code

1981, §§ 30-101 to 30-121, 49-203. *Dean v. District of Columbia*, 653 A.2d 307, 1995 D.C. App. LEXIS 8 (1995).

§ 1-301.46. Enacting and resolving clauses in acts and resolutions; numbering of sections.

(a) Each act of the Council of the District of Columbia shall have an enacting clause only in the 1st section of each act and such enacting clause shall be in the following form: “Be it enacted by the Council of the District of Columbia,”.

(b) Each resolution of the Council of the District of Columbia shall have a

resolving clause in the following form: "Resolved, by the Council of the District of Columbia,".

(c) Each section of each act or resolution shall be numbered consecutively. (Sept. 23, 1975, D.C. Law 1-17, § 3, 22 DCR 1991.)

Prior Codifications. — 1981 Ed., § 1-231. legislative history of D.C. Law 1-17, see Historical and Statutory Notes following § 1-301.45.
1973 Ed., § 1-146b.
Legislative history of Law 1-17. — For

§ 1-301.47. Definition of terms set forth in acts and resolutions.

For the purposes of any act or resolution of the Council of the District of Columbia, unless specifically provided otherwise:

(1) The term "Council" means the Council of the District of Columbia established under § 1-204.01.

(2) The term "Mayor" means the Mayor of the District of Columbia established under § 1-204.21.

(3) The term "Act" means an Act of the Congress.

(4) The term "act" means an act of the Council.

(5) The term "District" means the District of Columbia.

(Sept. 23, 1975, D.C. Law 1-17, § 4, 22 DCR 1992; Mar. 13, 2004, D.C. Law 15-105, § 105, 51 DCR 881.)

Prior Codifications. — 1981 Ed., § 1-232.
1973 Ed., § 1-146c.

Effect of amendments. — D.C. Law 15-105 added par. (5).

Legislative history of Law 1-17. — For legislative history of D.C. Law 1-17, see Historical and Statutory Notes following § 1-301.45.

Legislative history of Law 15-105. — Law 15-105, the "Technical Amendments Act of 2003", was introduced in Council and assigned

Bill No. 15-437, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 2003, and December 2, 2003, respectively. Signed by the Mayor on January 6, 2004, it was assigned Act No. 15-291 and transmitted to both Houses of Congress for its review. D.C. Law 15-105 became effective on March 13, 2004.

§ 1-301.47a. Fiscal impact statements.

(a) *Bills and resolutions.* —

(1) *In general.* — Notwithstanding any other law, except as provided in subsection (c) of this section, all permanent bills and resolutions shall be accompanied by a fiscal impact statement before final adoption by the Council.

(2) *Contents.* — The fiscal impact statement shall include the estimate of the costs which will be incurred by the District as a result of the enactment of the measure in the current and each of the first four fiscal years for which the act or resolution is in effect, together with a statement of the basis for such estimate.

(b) *Appropriations.* — Permanent and emergency acts which are accompanied by fiscal impact statements which reflect unbudgeted costs, shall be subject to appropriations prior to becoming effective.

(c) *Applicability.* — Subsection (a) shall not apply to emergency declaration, ceremonial, confirmation, and sense of the Council resolutions.

(Sept. 23, 1975, D.C. Law 1-17, § 4a, as added Oct. 16, 2006, 120 Stat. 2038, Pub. L. 109-356, § 204; Mar. 25, 2009, D.C. Law 17-353, § 207, 56 DCR 1117.)

Effect of amendments. — D.C. Law 17-353, in the section credit, validated a previously made technical correction.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 1-129.05.

§ 1-301.48. Seal.

The Council of the District of Columbia shall, by resolution, adopt an official seal, which shall be judicially noted.

(May 22, 1981, D.C. Law 4-3, § 2, 28 DCR 1422.)

Prior Codifications. — 1981 Ed., § 1-235.

Legislative history of Law 4-3. — Law 4-3 was introduced in Council and assigned Bill No. 4-20, which was referred to the Committee of the Whole. The Bill was adopted on first and

second readings on February 24, 1981 and March 10, 1981, respectively. Signed by the Mayor on March 20, 1981, it was assigned Act No. 4-13 and transmitted to both Houses of Congress for its review.

§ 1-301.49. Council record reproduction fees authorized.

Pursuant to § 1-207.42, the Secretary to the Council of the District of Columbia may establish and collect reasonable fees for the reproduction of transcripts or transcriptions of legislative meetings, committee meetings, legislative hearings, investigative hearings, and any other records that are part of the Council of the District of Columbia's official legislative files.

(July 17, 1985, D.C. Law 6-6, § 2, 32 DCR 2954.)

Prior Codifications. — 1981 Ed., § 1-236.

Emergency legislation. — For temporary (90 day) disclosure of District of Columbia government documents to the Council, see § 2 of Disclosure of Information to the Council Emergency Act of 2004 (D.C. Act 15-354, February 18, 2004, 51 DCR 2319).

Legislative history of Law 6-6. — Law 6-6, the "Council Record Reproduction Fee Authori-

zation Act of 1985," was introduced in Council and assigned Bill No. 6-133, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 16, 1985 and April 30, 1985, respectively. Signed by the Mayor on May 16, 1985, it was assigned Act No. 6-19 and transmitted to both Houses of Congress for its review.

Part D

THE MAYOR.

§ 1-301.61. Submission of statement of impact of proposed acts on taxpayers.

The Mayor shall submit to the Council of the District of Columbia, simultaneously with any proposed revenue measure or proposed act, a detailed statement with supporting data concerning the direct and indirect impact of

the measure or bill upon those taxpayers who will be directly or indirectly affected by the measure or act.

(Apr. 19, 1977, D.C. Law 1-124, title IX, § 902, 23 DCR 8749.)

Prior Codifications. — 1981 Ed., § 1-243. 1973 Ed., § 1-162a.

Legislative history of Law 1-124. — Law 1-124 was introduced in Council and assigned Bill No. 1-375, which was referred to the Committee on Finance and Revenue. The Bill was

adopted on first and second readings on December 3, 1976 and December 17, 1976, respectively. Signed by the Mayor on January 25, 1977, it was assigned Act No. 1-226 and transmitted to both Houses of Congress for its review.

CASE NOTES

Impingement of executive functions.

Proposed initiative, which sought to bar construction and operation of convention center, and which represented effort through both substantive and fiscal means to reverse legislative policy determination that District of Columbia should build and operate convention center, proposed a "law" within meaning of District of Columbia charter amendments relating to initiative proposals. D.C. Code 1980 Supp. § 1-181(a). *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

Because an initiative may establish a law, it must include a bill, and thus neither District of Columbia Board of Elections and Ethics nor court truly can determine whether initiative conforms to limitations on initiative right unless it scrutinizes very bill that would become law. (Per Ferren, J., with two Judges concurring and two Judges concurring in result.) D.C. Code 1980 Supp. §§ 1-181 to 1-187, 1-181(a). *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

District of Columbia Council, pursuant to its powers of ordinary legislation, can remove substantive authorization for funded project but, to extent Congress has appropriated funds for project, council can halt further expenditure

only through more elaborate requirements of budget process, even though project has been formally deauthorized, and thus substantial deauthorization by council can halt funded project during current fiscal year only if implemented by supplemental budget request act followed by congressional supplemental appropriations act. (Per Ferren, J., with two Judges concurring and two Judges concurring in result.) Budget and Accounting Act, 1921, § 201(a)(b), 31 U.S.C. § 11(b); D.C. Code 1978 Supp. §§ 47-221(c), 47-224. *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

Proposed District of Columbia initiative, substantive effect of which would be to amend general capital construction statute removing authorization for convention center and also to repeal law providing for its operation did not address merely administrative concerns or impermissibly interfere with execution of existing law and thus was "legislative" in both its substantive and final aspects and did not violate rule that initiative cannot extend to administrative matters. (Per Ferren, J., with two Judges concurring and two Judges concurring in result.) D.C. Code 1973, § 9-220(a); D.C. Code 1980 Supp. § 1-181(b). *Convention Center Referendum Committee v. District of Columbia Bd. of Elections & Ethics*, 441 A.2d 889, 1981 D.C. App. LEXIS 378 (1981).

§§ 1-301.62 to 1-301.68. District elements of comprehensive plan prepared; purposes; Mayor to submit proposed Land Use Element and map; submission of amendments to District elements of comprehensive plan; specifications; approval; Mayor to propose ward plans; updated plans; public hearing; transmission to Council for adoption; preserving and ensuring community input; publication of the Comprehensive Plan; re-

view of building, construction, or public space permits; zoning conformity.

Recodified as §§ 1-306.01 through 1-306.07.

§ 1-301.69. Abolition or consolidation of offices; reduction of employees; appointments to and removal from office.

The Mayor of the District of Columbia is hereby authorized to abolish any office, to consolidate 2 or more offices, reduce the number of employees, remove from office, and make appointments to any office under him authorized by law.

(June 11, 1878, 20 Stat. 104, ch. 180, § 3.)

Cross references. — Mayor's authority, suspension of officers and employees, see § 1-301.01.

Prior Codifications. — 1981 Ed., § 1-309. 1973 Ed., § 1-216.

Transfer of Functions. — Reorganization Order No. 3 of the Board of Commissioners, dated August 28, 1952, established in the government of the District of Columbia under the direction and control of the Board of Commissioners, a Department of General Administration headed by a Director. The Order transferred to the Director of General Administration all of the functions and positions of the District Personnel Board. Reorganization Order No. 21 of the Board, dated November 20, 1952, established a Personnel Office in the Department of General Administration and provided that the functions previously vested in the Board of Commissioners by law or transferred to the Board by Reorganization Plan No. 5 of 1952. Reorganization Order No. 40 of the Board of Commissioners, dated June 23, 1953, established the Executive Office of the Board of Commissioners under the direction and control of the Board of Commissioners to provide special and clerical assistance to the Board. The Order transferred to the new Executive Office all of the functions and positions of the previously existing Executive Office of the Board of Commissioners which the Order abolished. This Order was issued pursuant to Reorganization Plan No. 5 of 1952. The above cited Reorganization Orders were revoked by

Organization Order No. 2 of the Commissioner, dated December 13, 1967, which established the Executive Office of the Commissioner for the purpose of providing such managerial, budgetary, personnel, secretarial, informational and special assistance as the Commissioner may require in the administration of the Government of the District of Columbia. Certain functions set forth in this Order subsequently were transferred by Commissioner's Order Nos. 69-96, 71-270, and 71-307, and by Organization Order No. 30.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

Removal from office.

Where heavy truck driver in District government was notified of his discharge and the reasons therefor and was allowed to appeal, and a hearing was accorded him at which he was represented by counsel of his own choice,

who was permitted to call and examine witnesses under oath and to introduce testimony, and it was clear that only rules and regulations relied upon by employee were never adopted or promulgated, removal was accomplished lawfully and he was not entitled to recover wages

for time he was in nonpay status. D.C. Code 1951, §§ 1-216, 1-310. *Washington v. Government of District of Columbia*, 152 A.2d 191, 1959 D.C. App. LEXIS 270 (Cr.App. 1959).

§ 1-301.70. Taxes not to be anticipated by sale or hypothecation.

The Mayor of the District of Columbia shall have no power to anticipate taxes by a sale or hypothecation of any such taxes or evidences thereof.

(June 11, 1878, 20 Stat. 104, ch. 180, § 3.)

Cross references. — Borrowing, issuance of revenue anticipation notes by Council, see § 1-204.72.

Prior Codifications. — 1981 Ed., § 1-310. 1973 Ed., § 1-219.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.11(a)), appropriate changes in terminology were made in this section.

§ 1-301.71. Hack stands — Location.

The Mayor of the District of Columbia shall have power to locate the places where hacks shall stand and change them as often as the public interests require.

(June 11, 1878, 20 Stat. 104, ch. 180, § 3.)

Cross references. — Mayor's authority, regulation of hack stands, see § 50-2201.03.

Prior Codifications. — 1981 Ed., § 1-312. 1973 Ed., § 1-221.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 1-301.72. Hack stands — Adjoining railroad stations; rates of charges. [Repealed].

Repealed.

(June 7, 1898, 30 Stat. 747, Res. No. 46; Mar. 25, 1987, D.C. Law 6-97, § 22(c), 33 DCR 703.)

Prior Codifications. — 1981 Ed., § 1-313. 1973 Ed., § 1-222.

Legislative history of Law 6-97. — Law 6-97 was introduced in Council and assigned Bill No. 6-159, which was referred to the Committee on Public Services and Cable Television.

The Bill was adopted on first and second readings on December 17, 1985, and January 14, 1986, respectively. Signed by the Mayor on January 28, 1986, it was assigned Act No. 6-125 and transmitted to both Houses of Congress for its review.

§ 1-301.73. Rates for public vehicles to be fixed by Mayor. [Repealed].

Repealed.

(Mar. 3, 1909, 35 Stat. 724, ch. 250; Mar. 25, 1987, D.C. Law 6-97, § 22(c), 33 DCR 703.)

Prior Codifications. — 1981 Ed., § 1-314. 1973 Ed., § 1-223.

Legislative history of Law 6-97. — For

legislative history of D.C. Law 6-97, see Historical and Statutory Notes following § 1-310.72.

§ 1-301.74. Authority to fix certain licensing and registration fees.

The Mayor of the District of Columbia is authorized and empowered to fix from time to time, in accordance with § 1-301.75, the fees authorized to be charged by §§ 3-1623 [repealed], 3-1711 [repealed], 3-2019 [repealed], 3-2114 [repealed], 3-2115 [repealed], 3-2124 [repealed], 3-2127 [repealed], 3-2128 [repealed], 3-2905 [repealed], 3-2920 [repealed], 3-2301.04 [repealed], 3-2301.06 [repealed], 3-2301.08 [repealed], 3-2414 [repealed], 3-2418 [repealed], 3-2505 [repealed], 3-2609 [repealed], 3-2610 [repealed], 47-2886.13, 3-2704 [repealed], 47-2712, 47-2718 and 47-2843 [repealed].

(June 5, 1953, 67 Stat. 43, ch. 101, § 1; Mar. 10, 1983, D.C. Law 4-209, § 35(c), 30 DCR 390; June 22, 1983, D.C. Law 5-14, § 206(b), 30 DCR 2632.)

Cross references. — Boxing and wrestling commission, fees for permits and licenses, see § 3-606.

Electrical fees, schedules, see § 47-2712.

Public space permits, fee schedules, see § 47-2718.

Section references. — This section is referred to in § 1-301.75.

Prior Codifications. — 1981 Ed., § 1-346. 1973 Ed., § 1-252.

Legislative history of Law 4-209. — Law 4-209 was introduced in Council and assigned Bill No. 4-230, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on November 16, 1982, and December 14, 1982, respectively. Signed by the Mayor on December 28, 1982, it was assigned Act No. 4-299 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-14. — Law 5-14 was introduced in Council and assigned

Bill No. 5-74, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on April 12, 1983, and April 26, 1983, respectively. Signed by the Mayor on May 4, 1983, it was assigned Act No. 5-29 and transmitted to both Houses of Congress for its review.

References in text. — Section 3-1623 was repealed by D.C. Law 9-184, § 604, 39 DCR 8208, effective March 13, 1992.

Sections 3-1711 and 3-2019 were repealed by D.C. Law 9-245, § 38, 40 DCR 660, effective March 17, 1993.

Sections 3-2114, 3-2128, 3-2905, 3-2920, 3-2301.04, 3-2301.08, 3-2414, 3-2418, 3-2609, 3-2610, were repealed by D.C. Law 6-99, § 1104, effective March 26, 1986.

Section 47-2843 was repealed by D.C. Law 5-84, § 22(a), effective May 22, 1984.

Editor's notes. — Mayor authorized to issue rules: See Historical and Statutory Notes following § 1-1201.

§ 1-301.75. Increase or decrease of fees authorized in § 1-301.74.

The Mayor of the District of Columbia may after public hearing increase or decrease the fees authorized to be charged by each of the sections listed in § 1-301.74 to such amounts as may, in the judgment of the Mayor, be reasonably necessary to defray the approximate cost of administering each of said sections.

(June 5, 1953, 67 Stat. 43, ch. 101, § 2; June 22, 1983, D.C. Law 5-14, § 206(c), 30 DCR 2632.)

Cross references. — Electrical fees, schedules, see § 47-2712.

Public space permits, fee schedules, see § 47-2718.

Section references. — This section is referred to in § 1-301.74.

Prior Codifications. — 1981 Ed., § 1-347.

1973 Ed., § 1-253.

Legislative history of Law 5-14. — For legislative history of D.C. Law 5-14, see Historical and Statutory Notes following § 1-301.74.

Editor's notes. — Mayor authorized to issue rules: See Historical and Statutory Notes following § 1-1201.

§ 1-301.76. Power to grant pardons and respites; commissioning of officers; execution of laws.

The Mayor of the District of Columbia may grant pardons and respites for offenses against the late corporation of Washington, the ordinances of Georgetown and the levy court, the laws enacted by the Legislative Assembly, and the police and building regulations of the District. He shall commission all officers appointed under the laws of the District, and shall take care that the laws be faithfully executed.

(R.S., D.C., § 6; June 20, 1874, 18 Stat. 116, ch. 337, § 2; June 11, 1878, 20 Stat. 103, ch. 180, § 2; Apr. 28, 1892, 27 Stat. 22, ch. 55; 1967 Reorg. Plan No. 3, § 401, 81 Stat. 951.)

Prior Codifications. — 1981 Ed., § 1-311. 1973 Ed., § 1-220.

Emergency legislation. — For temporary (90 day) amendment of section, see § 4002 of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorga-

nization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 1-301.77. Prohibition on Capital Funds for Operating Expenses.

The Mayor shall not expend any moneys borrowed for capital projects for operating expenses of the District of Columbia government.

(Apr. 3, 2001, D.C. Law 13-226, § 4(d), 48 DCR 1603.)

Emergency legislation. — For temporary (90 day) addition of section, see § 4(d) of the Redevelopment Land Agency Disposition Review Congressional Review Emergency Act of 2000 (D.C. Act 13-524, January 11, 2001, 48 DCR 624).

For temporary (90 day) addition of section, see § 2(b) of the Redevelopment Land Agency Disposition Fiscal Year 2001 Budget Support Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-563, January 31, 2001, 48 DCR 1625).

Legislative history of Law 13-226. — Law 13-226, the “Redevelopment Land Agency Disposition Review Amendment Act of 2000”, was introduced in Council and assigned Bill No. 13-185, which was referred to the Committee Economic Development. The Bill was adopted on first and second readings on July 11, 2000, and November 8, 2000, respectively. Signed by the Mayor on November 29, 2000, it was assigned Act No. 13-498 and transmitted to both Houses of Congress for its review. D.C. Law 13-226 became effective on April 3, 2001.

§ 1-301.78. Grants for planning and planning implementation purposes.

Recodified as § 1-328.02.

(Sept. 24, 2010, D.C. Law 18-223, § 2212, 57 DCR 6242.)

§ 1-301.79. Rules.

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], may issue rules to implement the provisions of this § 1-301.78.

(Sept. 24, 2010, D.C. Law 18-223, § 2213, 57 DCR 6242.)

Temporary Addition of Section. — Section 403 of D.C. Law 18-222 added sections to read as follows:

“Sec. 403. Rules. The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.), may issue rules to implement the provisions of this act.”

Section 2002(b) of D.C. Law 18-222 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition, see § 2213 of Fiscal Year

2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

For temporary (90 day) addition, see § 403 of Fiscal Year 2010 Balanced Budget Support Emergency Act of 2010 (D.C. Act 18-450, June 28, 2010, 57 DCR 5635).

For temporary (90 day) addition, see § 403 of Fiscal Year 2010 Balanced Budget Support Congressional Review Emergency Act of 2010 (D.C. Act 18-531, August 6, 2010, 57 DCR 8109).

Legislative history of Law 18-223. — For Law 18-223, see notes following § 1-301.78.

Part Di

ATTORNEY GENERAL FOR THE DISTRICT OF COLUMBIA.

§ 1-301.81. Duties of the Attorney General for the District of Columbia.

(a)(1) The Attorney General for the District of Columbia ("Attorney General") shall have charge and conduct of all law business of the said District and all suits instituted by and against the government thereof, and shall possess all powers afforded the Attorney General by the common and statutory law of the District and shall be responsible for upholding the public interest. The Attorney General shall have the power to control litigation and appeals, as well as the power to intervene in legal proceedings on behalf of this public interest.

(2) The Attorney General shall furnish opinions in writing to the Mayor and the Council whenever requested to do so. All requests for opinions from agencies subordinate to the Mayor shall be transmitted through the Mayor. The Attorney General shall keep a record of requests, together with the opinions. Those opinions of the Attorney General issued pursuant to Reorganization Order No. 50 shall be compiled and published by the Attorney General on an annual basis.

(b) The authority provided under this section shall not be construed to deny or limit the duty and authority of the Attorney General as heretofore authorized, either by statute or under common law.

(May 27, 2010, D.C. Law 18-160, § 101, 57 DCR 3012.)

Legislative history of Law 18-160. — Law 18-160, the "Attorney General for the District of Columbia Clarification and Elected Term Amendment Act of 2010", was introduced in Council and assigned Bill No. 18-65, which was referred to the Committee on Public Safety and the Judiciary. The bill was adopted on first and

second readings on January 5, 2010, and February 2, 2010, respectively. Deemed approved without the signature of the Mayor on March 30, 2010, it was assigned Act No. 18-351 and transmitted to both Houses of Congress for its review. D.C. Law 18-160 became effective on May 27, 2010.

§ 1-301.82. Appointment of the Attorney General.

(a) Until such time as an Attorney General is elected under § 1-204.35, the Attorney General for the District of Columbia shall be appointed by the Mayor with the advice and consent of the Council pursuant to § 1-523.01.

(b) The Attorney General shall:

(1) Serve a 4-year term to coincide with the term for Mayor; and

(2) Be eligible for reappointment by the Mayor with the advice and consent of the Council, and may serve in a holdover capacity at the expiration of his or her term pursuant to § 1-523.01(c).

(c) This section shall not apply to the incumbent Attorney General on May 27, 2010.

(May 27, 2010, D.C. Law 18-160, § 102, 57 DCR 3012.)

Legislative history of Law 18-160. — For Law 18-160, see notes following § 1-301.81.

§ 1-301.83. Minimum qualifications and requirements for Attorney General.

(a) No person shall hold the position of Attorney General for the District of Columbia unless that person:

- (1) Is a registered qualified elector as defined in § 1-1001.02(20);
- (2) Is a bona fide resident of the District of Columbia;
- (3) Is a member in good standing of the bar of the District of Columbia;
- (4) Has been a member in good standing of the bar of the District of Columbia for at least 5 years prior to assuming the position of Attorney General; and

(5) Has been actively engaged, for at least 5 of the 10 years immediately preceding the assumption of the position of Attorney General, as:

- (A) An attorney in the practice of law in the District of Columbia;
- (B) A judge of a court in the District of Columbia;
- (C) A professor of law in a law school in the District of Columbia; or
- (D) An attorney employed in the District of Columbia by the United States or the District of Columbia.

(b) The Attorney General shall devote full-time to the duties of the office and shall not engage in the private practice of law and shall not perform any other duties while in office that are inconsistent with the duties and responsibilities of Attorney General.

(May 27, 2010, D.C. Law 18-160, § 103, 57 DCR 3012.)

Legislative history of Law 18-160. — For Law 18-160, see notes following § 1-301.81.

§ 1-301.84. Forfeiture of the position of Attorney General.

The occurrence of any of the following shall result in automatic forfeiture of the position of Attorney General for the District of Columbia:

- (1) Failure to maintain the qualifications required under § 1-301.83(a);
- (2) Violation of the prohibition against the private practice of law as provided in § 1-301.83(b); or
- (3) Conviction of a felony while in office.

(May 27, 2010, D.C. Law 18-160, § 104, 57 DCR 3012.)

Legislative history of Law 18-160. — For Law 18-160, see notes following § 1-301.81.

§ 1-301.85. Attorney General salary.

(a) Except as provided in subsection (b) of this section, the Attorney General for the District of Columbia shall be paid at an annual rate equal to the rate of basic pay for level E5 on the Executive Schedule pursuant to § 1-610.52.

(b) An Attorney General for the District of Columbia elected under § 1-

204.35 shall receive compensation equal to the Chairman of the Council of the District of Columbia as provided in § 1-204.03(d).

(May 27, 2010, D.C. Law 18-160, § 105, 57 DCR 3012.)

Legislative history of Law 18-160. — For Law 18-160, see notes following § 1-301.81.

§ 1-301.86. Annual budget for the Office of Attorney General.

(a) The Attorney General for the District of Columbia shall prepare and submit to the Mayor, for inclusion in the annual budget of the District of Columbia under part D of subchapter IV of Chapter 2 of this title [§ 1-204.41 et seq.], for the year, annual estimates of the expenditures and appropriations necessary for the operation of the Office of the Attorney General for the year. The Mayor shall make recommendations to the Council of the District of Columbia based on said submissions for the Council's action pursuant to § 1-204.46 and § 1-206.03(c).

(b) Amounts appropriated for the Office of the Attorney General shall be available solely for the operation of the office, and shall be paid to the Attorney General by the Mayor (acting through the Chief Financial Officer of the District of Columbia) in such installments and at such times as the Attorney General requires.

(May 27, 2010, D.C. Law 18-160, § 106, 57 DCR 3012.)

Legislative history of Law 18-160. — For Law 18-160, see notes following § 1-301.81.

§ 1-301.87. Chief Deputy Attorney General, Deputy Attorneys General, and Assistant Attorneys General.

(a) The Attorney General shall appoint a Chief Deputy Attorney General who shall meet the qualifications of § 1-301.83. The Chief Deputy Attorney General shall serve under the direction and control of the Attorney General and shall perform such duties as may be assigned to him or her by the Attorney General.

(b)(1) The Deputy Attorneys General and Assistant Attorneys General shall serve under the direction and control of the Attorney General and shall perform such duties as may be assigned to them by the Attorney General.

(2) A Deputy Attorney General shall be a resident of the District of Columbia within 180 days of his or her appointment.

(May 27, 2010, D.C. Law 18-160, § 107, 57 DCR 3012.)

Legislative history of Law 18-160. — For Law 18-160, see notes following § 1-301.81.

§ 1-301.88. Authority to administer oaths.

The Attorney General, Chief Deputy Attorney General, Deputy Attorneys General, and Assistant Attorneys General are authorized to administer oaths and affirmations in the discharge of their official duties within the District of Columbia.

(May 27, 2010, D.C. Law 18-160, § 108, 57 DCR 3012.)

Legislative history of Law 18-160. — For Law 18-160, see notes following § 1-301.81.

§ 1-301.89. Appointment of special counsel.

(a) Except as provided in subsection (b) of this section, if the Attorney General determines that his or her duty to represent the public interest in a particular matter may prevent him or her from adequately representing the government, an agency, or an official, the Attorney General shall notify the Mayor of this circumstance and the Mayor shall appoint special counsel to represent the government, an agency, or an official for the matter.

(b) If the Attorney General determines that he or she is unable to provide adequate representation pursuant to subsection (a) of this section in a matter in which the Mayor is expected to be adverse to the special counsel, the Attorney General shall notify the Chief Judge of the District of Columbia Court of Appeals, who shall appoint the special counsel for the matter.

(May 27, 2010, D.C. Law 18-160, § 109, 57 DCR 3012.)

Legislative history of Law 18-160. — For Law 18-160, see notes following § 1-301.81.

§ 1-301.89a. Authority to issue subpoenas for the production of documents.

(a) Except as provided in subsection (c) of this section, the Attorney General for the District of Columbia shall have the authority to issue subpoenas for the production of documents concerning criminal and delinquent offenses that the Attorney General has the authority to prosecute. The power to issue subpoenas under this section shall not be delegated other than to the Chief Deputy Attorney General, a Deputy Attorney General, or an Assistant Deputy Attorney General.

(b) Subpoenas issued pursuant to subsection (a) of this section shall contain the following:

- (1) The name of the person from whom documents are requested;
- (2) The person at the Office of the Attorney General to whom the documents shall be provided, and the date and time by which they must be provided;
- (3) A detailed list of the specific documents requested;
- (4) A short, plain statement of the recipient's rights and the procedure for enforcing and contesting the subpoena; and
- (5) The signature of the Attorney General, Chief Deputy Attorney Gen-

eral, Deputy Attorney General, or Assistant Deputy Attorney General approving the subpoena request and certifying that the documents sought are not available by other means as defined in subsection (c)(2) of this section.

(c)(1) The Attorney General shall not have the authority to issue a subpoena if:

(A) An indictment, information, or petition has been filed with the court formally charging the target of the investigation;

(B) Three business days have elapsed since the underlying offense was committed; or

(C) Other means are available to obtain the documents sought in the subpoena.

(2) For the purposes of paragraph (1)(C) of this subsection, documents shall be deemed available by other means if:

(A) The documents may be sought by means of a grand jury subpoena and are being sought during business hours on a business day;

(B) The documents have been unsuccessfully sought by means of a grand jury subpoena;

(C) The documents may be sought, or have been unsuccessfully sought, by means of a search warrant for information falling within the categories listed in § 23-521(d); or

(D) Consent has not been sought for the release of the documents, unless a determination has been made that requesting such consent would threaten or impede the investigation.

(d) Any person to whom a subpoena has been issued under this section may exercise the privileges enjoyed by all witnesses. A person to whom a subpoena has been issued may move to quash or modify the subpoena in the Superior Court of the District of Columbia on grounds including:

(1) The Attorney General failed to follow or satisfy the procedures set forth in this section for issuance of a subpoena;

(2) The Attorney General lacked the authority to issue the subpoena under subsection (c) of this section; or

(3) Any other grounds that exist under statute or common law for the quashing or modification of a subpoena.

(e)(1) The Attorney General shall maintain a log of all requests for subpoenas made pursuant to this section that shall include the following:

(A) The name of the person who initiated the subpoena request;

(B) The name of the persons who reviewed and acted on the request;

(C) A written statement justifying the subpoena request; and

(D) A written statement explaining why the subpoena request was approved or denied.

(2) The log produced pursuant to this subsection shall be exempt from disclosure pursuant to § 2-534 as investigatory records that are compiled for law-enforcement purposes, but shall be made available for inspection by the Council upon request.

(f) The Attorney General shall submit to the Council a quarterly report listing the number of subpoenas requested and issued under this section. The report shall include the following:

- (1) The offenses being investigated;
- (2) Whether the subpoenas were complied with or challenged;
- (3) Whether formal charges were filed; and
- (4) The circumstances that precluded using a grand jury subpoena, search warrant, or other means as provided under subsection (c) of this section to obtain this information.

(May 27, 2009, D.C. Law 18-160, § 110, as added June 3, 2011, D.C. Law 18-376, § 3, 58 DCR 944.)

Legislative history of Law 18-376. — For history of Law 18-376, see notes under § 1-301.21.

§ 1-301.90. Inability to carry out duties as Attorney General.

(a)(1) If the Attorney General for the District of Columbia is temporarily unable or unavailable to carry out the duties of the office, the Chief Deputy Attorney General shall serve as acting Attorney General as of the date that notice of such disability or unavailability is provided under paragraph (2) of this subsection and until the date that notice of resolution of the disability is provided under paragraph (3) of this subsection.

(2) Upon determining that he or she is temporarily unable or unavailable to carry out the duties of the office, the Attorney General shall provide written notice of the disability to the Chief Deputy Attorney General. If the Attorney General is incapable of providing the notice, the Mayor shall provide the notice.

(3) Upon determining that the disability or unavailability under paragraph (1) of this subsection has been resolved, the Attorney General shall provide written notice to the acting Attorney General that the Attorney General is able to carry out the duties of the office. The Attorney General shall reassume the position as of the date of the written notice.

(b) This section shall apply upon the election of an Attorney General for the District of Columbia pursuant to § 1-204.35.

(May 27, 2010, D.C. Law 18-160, § 121, 57 DCR 3012.)

Legislative history of Law 18-160. — For history of Law 18-160, see notes under § 1-301.81.

Part E

ADDITIONAL AUTHORITY OF THE DIRECTOR OF THE OFFICE OF CONTRACTING AND PROCUREMENT.

§ 1-301.91. Leasing authority.

(a) The Director of the Office of Contracting and Procurement is authorized

to enter into lease agreements with any person, copartnership, corporation, or other entity, which do not bind the government of the District of Columbia for periods in excess of 20 years for each such lease agreement, on such terms and conditions, including, without limitation, lease-purchase, as he deems to be in the interest of the District of Columbia and necessary for the accommodation of District of Columbia agencies and activities in buildings or other improvements which are in existence or are to be constructed by the lessor for such purposes, or on unimproved real property.

(b) Repealed.

(c) Repealed.

(d) Except as provided in subsection (d-1) of this section, the Mayor shall, pursuant to subsection (c) of this section, transmit to the Council a proposed resolution of approval for a 60-day period of review, exclusive of days of Council recess. If the Council takes no action to approve or disapprove the proposed resolution within the 60-day period, the proposed resolution shall be deemed approved. Factors governing the Council's consideration of the proposed resolution may include, but are not limited to, the following:

(1) The availability of adequate funds;

(2) The integrity of the selection process; and

(3) Whether the proposal is in the best interests of the District.

(d-1) Notwithstanding subsection (d) of this section, the proposed resolution of approval with respect to any lease which is required to be approved by the Council pursuant to subsection (c) of this section, and which is negotiated on behalf of the District by duly licensed commercial real estate brokers pursuant to tenant representative services contracts then in effect between the District and such brokers, shall be transmitted to the Council for a review period of 15 calendar days. If the Council takes no action to approve or disapprove the proposed resolution within the 15-day period, the proposed resolution shall be deemed approved.

(e) The estimated maximum cost of any project approved pursuant to this section may be increased by an amount equal to the increase, if any, as determined by the Director of the Office of Contracting and Procurement, in construction or alteration costs, from the date of transmittal of the prospectus to the Council, not to exceed 10% of the estimated gross cost.

(f) Repealed.

(g) The Director of the Office of Contracting and Procurement shall not make any agreement or undertake any commitment that will result in the construction of any building that is to be constructed for lease to, and for predominant use by, the District until the Director of the Office of Contracting and Procurement has established detailed specification requirements for the building and unless the proposal is consistent with the Public Facilities Plan.

(h) Repealed.

(h-1) The Director of the Office of Contracting and Procurement may acquire a new leasehold interest in any building that is proposed to be leased for the predominant use of rentable space by, or constructed for lease to and for predominant use of rentable space by the District government without regard to §§ 2-303.03 and 2-303.04; provided that such leasehold interest is acquired

pursuant to a lease negotiated on behalf of the District by a duly licensed commercial real estate broker pursuant to a tenant representative services contract then in effect between the District and the broker.

(i) The Director of the Office of Contracting and Procurement shall inspect every building to be constructed for lease to, and for predominant use by, the District government during the construction of the building in order to determine compliance with the specifications established for the building. Upon the completion of the building, the Director of the Office of Contracting and Procurement shall evaluate the building to determine the extent, if any, of failure to comply with the specifications for the building. The Director of the Office of Contracting and Procurement shall ensure that any contract entered into for a leasehold interest in a building shall contain a provision that permits a reduction in rent during any period that the building is not in compliance with the specifications for the building.

(Jan. 5, 1971, 84 Stat. 1939, Pub. L. 91-650, title VII, § 705(a), (b); Mar. 8, 1991, D.C. Law 8-257, § 2, 38 DCR 969; Apr. 12, 1997, D.C. Law 11-259, § 301, 44 DCR 1423; May 7, 1998, D.C. Law 12-104, § 4, 45 DCR 1687; Apr. 20, 1999, D.C. Law 12-264, §§ 4, 59(b), 46 DCR 2118; June 11, 1999, D.C. Law 13-7, § 2, 46 DCR 3626; Oct. 20, 1999, D.C. Law 13-38, § 402, 46 DCR 6373; Mar. 16, 2005, D.C. Law 15-238, § 3, 51 DCR 10599.)

Cross references. — Correctional treatment facilities, exemptions from leasing and property laws, see § 24-261.05.

Public parking authority, transfer of property interest between the District and the public parking authority, Mayor's authority, see § 50-2509.

Public postsecondary education reorganization, office of contracting and procurement, power to contract, see § 38-1204.05.

Prior Codifications. — 1981 Ed., § 1-336. 1973 Ed., § 1-243b.

Effect of amendments. — D.C. Law 13-7, in the introductory portion of subsec. (d), in the first sentence, substituted "Mayor" for "Director of the Office of Contracting and Procurement".

D.C. Law 13-38 repealed subsec. (b), which read:

"No lease agreement entered into under subsection (a) of this section shall provide for the payment of rental in excess of the limitations prescribed by § 278a of Title 40, United States Code, except that the provisions of this subsection shall not apply to leases made prior to January 5, 1971, except when renewals thereof are made after such date."

D.C. Law 15-238 repealed subsec. (c) which had read:

"(c) No funds under the control of the Mayor shall be obligated or expended to construct, alter, purchase, or acquire any building or interest in any building to be used as a public building for the District government or to house

a program funded through the District government that involves a total expenditure in excess of \$1,000,000 unless the proposed construction, alteration, purchase, or acquisition has been submitted to and approved by the Council, by resolution. No funds under the control of the Mayor shall be obligated or expended to lease any space at an average annual gross rental in excess of \$1,000,000 over the lease period, inclusive of all options, for use for public purposes by the District government or to house a program funded through the District government unless the proposed lease agreement has been submitted to and approved by the Council, by resolution. No funds under the control of the Mayor shall be obligated or expended to alter any building or part of any building that is under lease by the District government for a public purpose if the cost of the alteration would exceed \$500,000, unless the proposed alteration has been submitted to and approved by the Council, by resolution. The Mayor shall not designate a developer for city-owned property unless the developer has been selected through competitive procedures in accordance with subchapter III of Chapter 3 of Title 2, and the proposal has been submitted to the Council for a 60-day period of review, exclusive of days of Council recess, pursuant to subsection (d) of this section and approved by the Council by resolution. The Mayor shall submit with the request for approval a prospectus of the proposed facility that shall include, but is not limited to:

"(1) A brief description of the building to be constructed, altered, purchased, or acquired, or the space to be leased, including its location, size, condition if applicable, and its conformity with allowable uses under the Zoning Regulations;

"(2) An estimate of the gross and net costs to the District government of the facility to be constructed, altered, purchased, or acquired, or the space to be leased;

"(3) The facility's conformity with the Public Facilities Plan developed pursuant to title VI of the District of Columbia Comprehensive Plan Act of 1984;

"(4) A statement by the Director of the Office of Contracting and Procurement that suitable space owned by the District is not available or cannot be reasonably renovated or altered and that suitable rental space is not available at a price commensurate with the space and price to be afforded through the proposed action, including a current survey of suitable vacant rental office space;

"(5) A certification by the Director of the Office of Contracting and Procurement that no other public space is available, including surplus government property that is under the control of the Board of Education; and

"(6) A statement by the Director of the Office of Contracting and Procurement of rents and other housing costs currently being paid by the District for entities of the District government to be housed in the building to be constructed, altered, purchased, or acquired, or the space to be leased."

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Tenant Representative Services Lease Negotiation and Review Temporary Amendment Act of 1997 (D.C. Law 12-5, June 5, 1997, law notification 44 DCR 4637).

For temporary (225 day) approval of a proposed lease agreement between the District of Columbia and Wells Fargo Delaware Trust Company, see § 2 of Unified Communications Center Lease Agreement Temporary Act of 2003 (D.C. Law 15-53, December 9, 2003, law notification 51 DCR 1788).

Emergency legislation. — For temporary amendment of section, see § 2 of the Tenant Representative Services Lease Negotiation and Review Emergency Amendment Act of 1997 (D.C. Act 12-4, February 24, 1997, 44 DCR 1607), § 2 of the Tenant Representative Services Lease Negotiation and Review Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-81, June 10, 1997, 44 DCR 3607), and § 2 of the Tenant Representative Services Lease Negotiation and Review Emergency Amendment Act of 1998 (D.C. Act 12-269, February 19,

Legislative history of Law 8-257. — Law 8-257 was introduced in Council and assigned

Bill No. 8-645, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-342 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-92. — Law 11-92, the "Acquisition of Space Needs For District Government Officers and Employees Temporary Amendment Act of 1995," was introduced in Council and assigned Bill No. 11-494. The Bill was adopted on first and second readings on November 7, 1995, and December 5, 1995, respectively. Signed by the Mayor on December 18, 1995, it was assigned Act No. 11-175 and transmitted to both Houses of Congress for its review. D.C. Law 11-92 became effective on February 27, 1996.

Legislative history of Law 11-259. — Law 11-259, the "Procurement Reform Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-705, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on January 3, 1997, it was assigned Act No. 11-526 and transmitted to both Houses of Congress for its review. D.C. Law 11-259 became effective on April 12, 1997.

Legislative history of Law 12-104. — Law 12-104, the "Procurement Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-363, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 4, 1997, and January 6, 1998, respectively. Signed by the Mayor on February 3, 1998, it was assigned Act No. 12-280 and transmitted to both Houses of Congress for its review. D.C. Law 12-104 became effective on May 8, 1998.

Legislative history of Law 12-264. — Law 12-264, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

Legislative history of Law 13-7. — Law 13-7, the "Lease Approval Technical Amendment Act of 1999," was introduced in Council and assigned Bill No. 13-054, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on February 2, 1999, and March 2, 1999, respectively. Signed by the Mayor on

March 22, 1999, it was assigned Act No. 13-44 and transmitted to both Houses of Congress for its review. D.C. Law 13-7 became effective on June 11, 1999.

Legislative history of Law 13-38. — Law 13-38, the “Service Improvement and Fiscal Year 2000 Budget Support Act of 1999,” was introduced in Council and assigned Bill No. 13-161, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 11, 1999, and June 22, 1999, respectively. Signed by the Mayor on July 8, 1999, it was assigned Act No. 13-111 and transmitted to both Houses of Congress for its review. D.C. Law 13-38 became effective on October 20, 1999.

Legislative history of Law 15-238. — Law 15-238, the “Property Management Reform Amendment Act of 2004,” was introduced in Council and assigned Bill No. 15-715, which was referred to the Subcommittee on Human Rights, Latino Affairs and Property. The Bill was adopted on first and second readings on September 21, 2004, and October 5, 2004, respectively. Signed by the Mayor on November 1, 2004, it was assigned Act No. 15-578 and transmitted to both Houses of Congress for its review. D.C. Law 15-238 became effective on March 16, 2005.

References in text. — “The District of Columbia Comprehensive Plan Act of 1984”, referred to in (c)(3), is D.C. Law 5-76.

The “Public Facilities Plan”, referred to in (g), is Title VI of D.C. Law 5-76.

Delegation of Authority. — Delegation of contracting authority, see Mayor’s Order 90-178, November 19, 1990.

Delegation of authority under Public Law 91-650, D.C. Code § 1-301.96, see Mayor’s Order 93-6, January 15, 1993.

Amendment of Mayor’s Order 90-178, Delegation of Contracting Authority: See Mayor’s Order 96-83, June 20, 1996 (43 DCR 3510).

Amendment of Mayor’s Order 90-178, Delegation of Contracting Authority: See Mayor’s Order 96-136, September 9, 1996 (43 DCR

Resolutions. — Resolution 14-79, the “77 P Street, N.E., Lease Approval Emergency Resolution of 2001”, was approved effective April 3, 2001.

Resolution 14-108, the “Parcel ¹²⁴/₁₇₁ Purchase Approval Emergency Approval Resolution of 2001”, was approved effective May 1, 2001.

Resolution 14-168, the “3515 and 3521 V Street, N.E., Lease Approval Emergency Resolution of 2001”, was approved effective July 10, 2001.

Resolution 14-199, the “821 Howard Road, S.E., Purchase Approval Emergency Resolution of 2001”, was approved effective September 19, 2001.

Mayor’s Orders. — Amendment of Mayor’s Order 96-172, Establishing Position of Administrator in the Commission on Mental Health Services; Appointment of Interim Administrator; Duties of Administrator: See Mayor’s Order 97-6, January 9, 1997 (44 DCR 357).

Editor’s notes. — D.C. Law 12-104 purported to designate the existing text in (h) as (h)(1), and added a new (h)(2). However, (h) was repealed by D.C. Law 11-259. At the direction of the D.C. Codification Counsel, (h)(2) has been redesignated as new (h-1).

Lease/Purchase of Building and Land at 441-4th Street, N.W. (One Judiciary Square: Lot 20; Square 532) Emergency Approval Resolution of 1991: Pursuant to Resolution 9-94, effective July 19, 1991, the Council approved, on an emergency basis, the District of Columbia’s purchase of an office building and lease/purchase of the land at 441-4th Street, N.W. to be used for municipal purposes.

See Mayor’s Order 92-153, December 1, 1992.

65 K Street, N.E., Lease Amendment Approval Emergency Resolution of 1994: Pursuant to Resolution 10-500, effective December 6, 1994, the Council approved, on an emergency basis, the amendment of a lease for 65 K Street, N.E.

717 Fourteenth Street, N.W. Lease Approval Emergency Resolution of 1997: Pursuant to Resolution 12-348, effective December 19, 1997, the Council approved, on an emergency basis, the Lease Agreement between the District of Columbia government and 711 Fourteenth Street, N.W., Associates Limited Partnership, and to exempt this lease from the formal competitive procurement requirements applicable to leases where the District will be the predominant user of the building.

1300 First Street, N.E. Lease Approval Emergency Resolution of 1998: Pursuant to Resolution 12-489, effective May 5, 1998, the Council approved, on an emergency basis, the Lease Agreement between the District of Columbia government and Edward R. Webster Company for 1300 First Street, N.E.

University of the District of Columbia Acquisition of 4250 Connecticut Avenue Authorization Resolution of 1995: Pursuant to Resolution 11-192, effective December 5, 1995, the Council approved the acquisition, by the University of the District of Columbia, of an interest in a ground lease of Lot 1 in Square 2047 and the purchase of improvements situated thereon known as 4250 Connecticut Avenue, N.W., to be used for governmental purposes.

Section 151 of Public Law 106-113 provided: “(a) RESTRICTIONS ON LEASES.—Upon the expiration of the 60-day period that begins on the date of the enactment of this Act, none of the funds contained in this Act may be used to make rental payments under a lease for the use of real property by the District of Columbia

government (including any independent agency of the District) unless the lease and an abstract of the lease have been filed (by the District of Columbia or any other party to the lease) with the central office of the Deputy Mayor for Economic Development, in an indexed registry available for public inspection.

"(b) ADDITIONAL RESTRICTIONS ON CURRENT LEASES.—

"(1) IN GENERAL.—Upon the expiration of the 60-day period that begins on the date of the enactment of this Act, in the case of a lease described in paragraph (3), none of the funds contained in this Act may be used to make rental payments under the lease unless the lease is included in periodic reports submitted by the Mayor and Council of the District of Columbia to the Committees on Appropriations of the House of Representatives and Senate describing for each such lease the following information:

"(A) The location of the property involved, the name of the owners of record according to the land records of the District of Columbia, the name of the lessors according to the lease, the rate of payment under the lease, the period of time covered by the lease, and the conditions under which the lease may be terminated.

"(B) The extent to which the property is or is not occupied by the District of Columbia government as of the end of the reporting period involved.

"(C) If the property is not occupied and utilized by the District government as of the end of the reporting period involved, a plan for occupying and utilizing the property (including construction or renovation work) or a status statement regarding any efforts by the District to terminate or renegotiate the lease.

"(2) TIMING OF REPORTS.—The reports described in paragraph (1) shall be submitted for each calendar quarter (beginning with the quarter ending December 31, 1999) not later than 20 days after the end of the quarter involved, plus an initial report submitted not later than 60 days after the date of the enactment of this Act, which shall provide information as of the date of the enactment of this Act.

"(3) LEASES DESCRIBED.—A lease described in this paragraph is a lease in effect as

of the date of the enactment of this Act for the use of real property by the District of Columbia government (including any independent agency of the District) which is not being occupied by the District government (including any independent agency of the District) as of such date or during the 60-day period which begins on the date of the enactment of this Act."

Section 162 of Public Law 106-522 provided:

"(a) EXCLUSIVE AUTHORITY OF MAYOR.—Notwithstanding section 451 of the District of Columbia Home Rule Act or any other provision of District of Columbia or Federal law to the contrary, the Mayor of the District of Columbia shall have the exclusive authority to approve and execute leases of the Washington Marina and the Washington municipal fish wharf with the existing lessees thereof for an initial term of 30 years, together with such other terms and conditions (including renewal options) as the Mayor deems appropriate.

"(b) DEFINITIONS.—In this section—

"(1) the term 'Washington Marina' means the portions of Federal property in the Southwest quadrant of the District of Columbia within Lot 848 in Square 473, the unassessed Federal real property adjacent to Lot 848 in Square 473, and riparian rights appurtenant thereto; and

"(2) the term 'Washington municipal fish wharf' means the water frontage on the Potomac River lying south of Water Street between 11th and 12th Streets, including the buildings and wharves thereon."

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

Mayoral approval.

Indication by city administrator on mayor's decision/information form that lease/purchase contract had passed "thru" her could not serve as substitute for approval by mayor when line for mayor's signature remained blank and, in any event, contract was otherwise invalid in that it was for amount in excess of \$3,000, and mayor is not authorized to appoint district

employees to enter into lease agreements in excess of that amount; thus, there was no binding contract until mayor approved lease/purchase agreement, at which time it had become subject to emergency law requiring compliance with competitive bidding requirements. D.C. Code 1981, §§ 1-336, 1-339(a). RDP Dev. Corp. v. District of Columbia, 645 A.2d 1078, 1994 D.C. App. LEXIS 118 (1994).

§ 1-301.92. Use of exchange allowances or sale proceeds to purchase similar items.

In purchasing motor-propelled or animal-drawn vehicles or tractors, or road, agricultural, manufacturing, or laboratory equipment, or boats, or parts, accessories, tires, or equipment thereof, the Director of the Office of Contracting and Procurement or his duly authorized representatives may exchange or sell similar items and apply the exchange allowances or proceeds of sales in such cases in whole or in part payment therefor.

(June 30, 1945, 59 Stat. 293, ch. 209, § 7; July 9, 1946, 60 Stat. 532, ch. 544, § 7; Apr. 12, 1997, D.C. Law 11-259, § 303, 44 DCR 1423.)

Prior Codifications. — 1981 Ed., § 1-344. 1973 Ed., § 1-250.

Legislative history of Law 11-259. — For

legislative history of D.C. Law 11-259, see Historical and Statutory Notes following § 1-301.91.

Part F

ADDITIONAL AUTHORITY OF THE ATTORNEY GENERAL.

§ 1-301.111. Duties of the Corporation Counsel. [Repealed].

Repealed.

(Leg. Assem., Aug. 23, 1871, ch. 108, § 18; June 20, 1874, 18 Stat. 116, ch. 337, § 2; Mar. 3, 1901, 31 Stat. 1340, ch. 854, § 932; June 30, 1902, 32 Stat. 537, ch. 1329; Mar. 4, 1923, 42 Stat. 1488, ch. 265; 1967 Reorg. Plan No. 3, § 401, 81 Stat. 951; May 27, 2010, D.C. Law 18-160, § 141(a), 57 DCR 3012.)

Prior Codifications. — 1981 Ed., § 1-361. 1973 Ed., § 1-301.

Legislative history of Law 18-160. — For Law 18-160, see notes following § 1-301.81.

Mayor's Orders. — Re-Designation of the Office of the Corporation Counsel as the Office of the Attorney General, see Mayor's Order 2004-92, May 26,

Editor's notes. — Office of Corporation Counsel abolished: The Office of the Corporation Counsel was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 50 of the Board of Commissioners, dated June 26, 1953, as amended, provided that the Office of the Corporation Counsel would be organized as previously constituted. The previously existing Office of the Corporation Counsel was abolished, and all functions and positions including the duties, powers, and authorities of all officers and employees of the former office were transferred to the new office. Authority to settle claims and suits against the

District up to and including \$5,000 (or \$10,000 if approved by the Assistant Commissioner) was delegated to the Corporation Counsel by the Order. This Order was issued pursuant to Reorganization Plan No. 5 of 1952. The functions of the Employees Compensation Sub-Section, Investigation Section, Office of the Corporation Counsel, were transferred to the Personnel Office, Department of General Administration by Reorganization Order No. 21 of the Board of Commissioners, dated November 20, 1952. This Order was issued pursuant to Reorganization Plan No. 5 of 1952. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967.

Office of Secretary to Board of Commissioners abolished: See Historical and Statutory Notes following § 1-301.23.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts

Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished

the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 1-301.112. Duties of Assistant Corporation Counsels. [Repealed].

Repealed.

(Leg. Assem., Aug. 23, 1871, ch. 108, § 19; June 20, 1874, 18 Stat. 116, ch. 337, § 2; Mar. 3, 1901, 31 Stat. 1340, ch. 854, § 932; June 30, 1902, 32 Stat. 537, ch. 1329; Mar. 4, 1923, 42 Stat. 1488, ch. 265; 1967 Reorg. Plan No. 3, § 401, 81 Stat. 951; May 27, 2010, D.C. Law 18-160, § 141(a), 57 DCR 3012.)

Prior Codifications. — 1981 Ed., § 1-362. 1973 Ed., § 1-302.

Legislative history of Law 18-160. — For Law 18-160, see notes following § 1-301.81.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 1-301.113. Corporation Counsel and Assistants may administer oaths. [Repealed].

Repealed.

(Leg. Assem., Aug. 19, 1871, ch. 51; Mar. 3, 1901, 31 Stat. 1340, ch. 854, § 932; June 30, 1902, 32 Stat. 537, ch. 1329; May 27, 2010, D.C. Law 18-160, § 141(b), 57 DCR 3012.)

Prior Codifications. — 1981 Ed., § 1-363. 1973 Ed., § 1-303.

Legislative history of Law 18-160. — For Law 18-160, see notes following § 1-301.81.

§ 1-301.114. Funding for civil legal services. [Repealed].

Repealed.

(Sept. 18, 2007, D.C. Law 17-20, § 3032, 54 DCR 7052; Sept. 24, 2010, D.C. Law 18-223, § 3013, 57 DCR 6242.)

Emergency legislation. — For temporary (90 day) addition, see § 3032 of Fiscal Year

2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

For temporary (90 day) repeal of section, see § 3013 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 17-20. — Law 17-20, the “Fiscal Year 2008 Budget Support Act of 2007”, was introduced in Council and assigned Bill No. 17-148 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 15, 2007, and June 5, 2007, respectively. Signed

by the Mayor on June 28, 2007, it was assigned Act No. 17-63 and transmitted to both Houses of Congress for its review. D.C. Law 17-20 became effective on September 18, 2007.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 1-301.78.

Short title. — Short title: Section 3031 of D.C. Law 17-20 provided that subtitle D of title III of the act may be cited as the “Civil Legal Services Amendment Act of 2007”.

Part Fi

OFFICE OF THE INSPECTOR GENERAL.

§ 1-301.115a. Creation and duties of Office of the Inspector General.

(a)(1)(A) There is created within the executive branch of the government of the District of Columbia the Office of the Inspector General. The Office shall be headed by an Inspector General appointed pursuant to subparagraph (B) of this subsection, who shall serve for a term of 6 years and shall be subject to removal only for cause by the Mayor (with the approval of the District of Columbia Financial Responsibility and Management Assistance Authority in a control year) or (in the case of a control year) by the Authority. The Inspector General shall not serve in a hold-over capacity upon the expiration of his or her term.

(A-i)(i) If a vacancy in the position of Inspector General occurs as a consequence of resignation, disability, death, or a reason other than the expiration of the term of the Inspector General, the Mayor shall appoint a replacement to fill the unexpired term in the same manner provided in subparagraph (C) of this paragraph; provided, that the Mayor shall submit the nomination to the Council within 30 days after the occurrence of the vacancy. A person appointed to fill the unexpired term shall serve only for the remainder of the term.

(ii) If a vacancy occurs, no person shall serve on an acting basis as the Inspector General unless the person meets the requirements of subparagraph (D-i) of this paragraph.

(A-ii) The Inspector General first appointed by the Mayor by and with the advice and consent of the Council, on or after November 4, 2003, shall serve until May 19, 2008. Each Inspector General appointed to fill the position after May 19, 2008 shall serve a 6-year term to end May 19, 2014 and every 6 years thereafter.

(B) During a control year, the Inspector General shall be appointed by the Mayor as follows:

(i) Prior to the appointment of the Inspector General, the Authority may submit recommendations for the appointment to the Mayor.

(ii) In consultation with the Authority and the Council, the Mayor

shall nominate an individual for appointment and notify the Council of the nomination.

(iii) After the expiration of the 7-day period which begins on the date the Mayor notifies the Council of the nomination under sub-subparagraph (ii) of this subparagraph, the Mayor shall notify the Authority of the nomination.

(iv) The nomination shall be effective subject to approval by a majority vote of the Authority.

(C) During a year which is not a control year, the Inspector General shall be appointed by the Mayor with the advice and consent of the Council. Prior to appointment, the Authority may submit recommendations for the appointment.

(D) The Inspector General shall be appointed:

(i) Without regard to party affiliation;

(ii) On the basis of integrity;

(iii) With a minimum of 7 years of supervisory and management experience; and

(iv) With a minimum of 7 years demonstrated experience and ability, in the aggregate, in law, accounting, auditing, financial management analysis, public administration, or investigations.

(D-i)(i) The Inspector General shall be:

(I) A graduate of an accredited law school and a member in good standing of the bar of the District of Columbia for at least 7 years immediately preceding his or her appointment, and shall have 7 years experience in the practice of law;

(II) Licensed as a certified public accountant in the District of Columbia under Chapter I-B of Title 47 of the District of Columbia Official Code for at least 7 years immediately preceding his or her appointment and shall have 7 years experience, in the aggregate, in the practice of accounting, tax consulting, or financial consulting; or

(III) The holder of a certified public accountant certificate from the District of Columbia Board of Accountancy and a member of the Greater Washington Society of Certified Public Accountants, and shall have 7 years experience in the practice of public accounting.

(ii) Sub-subparagraph (i) of this subparagraph shall apply as of June 1, 2003 and, notwithstanding any other provision of this section or other law, a person who holds the position of Inspector General and who does not meet the requirements of sub-subparagraph (i) of this subparagraph on June 1, 2003 shall not continue to hold the position and the position shall be vacant.

(E)(i) The Inspector General shall be paid at a rate established by the Mayor, subject to Council approval by resolution.

(ii) On or after March 14, 2007, the Mayor may re-determine the compensation of the incumbent Inspector General retroactive to the date of his appointment.

(2) The annual budget for the Office shall be adopted as follows:

(A) The Inspector General shall prepare and submit to the Mayor, for inclusion in the annual budget of the District of Columbia under part D of title IV of the District of Columbia Home Rule Act [§ 1-204.41 et seq.], for the year,

annual estimates of the expenditures and appropriations necessary for the operation of the Office for the year. All such estimates shall be forwarded by the Mayor to the Council of the District of Columbia for its action pursuant to §§ 1-204.46 and 1-206.03(c), without revision but subject to recommendations. Notwithstanding any other provision of such Act, the Council may comment or make recommendations concerning such estimates, but shall have no authority to revise such estimates.

(B) Amounts appropriated for the Inspector General shall be available solely for the operation of the Office, and shall be paid to the Inspector General by the Mayor (acting through the Chief Financial Officer of the District of Columbia) in such installments and at such times as the Inspector General requires.

(3) The Inspector General shall:

(A) Conduct independent fiscal and management audits of District government operations;

(B) Receive notification in advance of all external audits conducted by any District government entity, with the exception of the District of Columbia Auditor, and immediately provided with a copy of any final report issued;

(C) Serve as principal liaison between the District government and the U.S. General Accounting Office;

(D) Independently conduct audits, inspections, assignments, and investigations as the Mayor shall request, and any other audits, inspections and investigations that are necessary or desirable in the Inspector General's judgment;

(E) Annually conduct an operational audit of all procurement activities carried out pursuant to this chapter in accordance with regulations and guidelines prescribed by the Mayor and issued in accordance with § 2-302.05 [repealed];

(F)(i) Forward to the appropriate authority any report, as a result of any audit, inspection or investigation conducted by the office, identifying misconduct or unethical behavior; and

(ii) Forward to the Mayor, within a reasonable time of reporting evidence of criminal wrongdoing to the Office of the U.S. Attorney or other law enforcement office, any report regarding the evidence, if appropriate;

(G) Pursuant to a contract described in paragraph (4) of this subsection, provide certifications under § 47-3401.01(b)(5);

(H) Pursuant to a contract described in paragraph (4) of this subsection, audit the complete financial statement and report on the activities of the District government for such fiscal year, for the use of the Mayor under § 1-204.48(a)(4);

(I) Not later than 30 days before the beginning of each fiscal year (beginning with fiscal year 1996) and in consultation with the Mayor, the Council, and the Authority, establish an annual plan for audits to be conducted under this paragraph during the fiscal year under which the Inspector General shall report only those variances which are in an amount equal to or greater than \$1,000,000 or 1% of the applicable annual budget for the program in which the variance is found (whichever is lesser); and

(J) During fiscal year 2006 and each succeeding fiscal year, conduct investigations to determine the accuracy of certifications made to the Chief Financial Officer of the District of Columbia under § 1-204.24d(28) of attorneys in special education cases brought under the Individuals with Disabilities Education Act in the District of Columbia.

(4) The Inspector General shall enter into a contract with an auditor who is not an officer or employee of the Office to:

(A) Audit the financial statement and report described in paragraph (3)(H) of this subsection for a fiscal year, except that the financial statement and report may not be audited by the same auditor (or an auditor employed by or affiliated with the same auditor, except as may be provided in paragraph (5)) for more than 5 consecutive fiscal years; and

(B) Audit the certification described in paragraph (3)(G) of this subsection.

(5) Notwithstanding paragraph (4)(A) of this subsection, an auditor who is a subcontractor to the auditor who audited the financial statement and report described in paragraph (3)(H) of this subsection for a fiscal year may audit the financial statement and report for any succeeding fiscal year (as either the prime auditor or as a subcontractor to another auditor) if:

(A) Such subcontractor is not a signatory to the statement and report for the previous fiscal year;

(B) The prime auditor reviewed and approved the work of the subcontractor on the statement and report for the previous fiscal year; and

(C) The subcontractor is not an employee of the prime contractor or of an entity owned, managed, or controlled by the prime contractor.

(a-1) It is the purpose of the Office of the Inspector General to independently:

(1) Conduct and supervise audits, inspections and investigations relating to the programs and operations of District government departments and agencies, including independent agencies;

(2) Provide leadership and coordinate and recommend policies for activities designed to promote economy, efficiency, and effectiveness and to prevent and detect corruption, mismanagement, waste, fraud, and abuse in District government programs and operations; and

(3) Provide a means for keeping the Mayor, Council, and District government department and agency heads fully and currently informed about problems and deficiencies relating to the administration of these programs and operations and the necessity for and progress of corrective actions.

(b)(1) In determining the procedures to be followed and the extent of the examinations of invoices, documents, and records, the Inspector General shall give due regard to the provisions of this chapter and shall comply with standards established by the U.S. Comptroller General for audits of federal establishments, organizations, programs, activities and functions, and shall comply with standards established by the President's Council on Integrity and Ethics for investigations and inspections, and generally accepted procurement principles, practices, and procedures, including federal and District case law, decisions of the U.S. Comptroller General, and decisions of federal contract appeals boards.

(2) The Inspector General shall give due regard to the activities of the District of Columbia Auditor with a view toward avoiding duplication and insuring effective coordination and cooperation. The Inspector General shall take appropriate steps to assure that work performed by auditors, inspectors and investigators within or for the Office of the Inspector General shall comply with the standards and procedures determined through the application of this subsection.

(b-1) The Inspector General shall not disclose the identity of any person who brings a complaint or provides information to the Inspector General, without the person's consent, unless the Inspector General determines that disclosure is unavoidable or necessary to further the ends of an investigation.

(c)(1) The Inspector General shall have access to the books, accounts, records, reports, findings, and all other papers, items, or property belonging to or in use by all departments, agencies, instrumentalities, and employees of the District government, including agencies which are subordinate to the Mayor, independent agencies, boards, and commissions, but excluding the Council of the District of Columbia, and the District of Columbia Courts, necessary to facilitate an audit, inspection or investigation.

(2)(A) The Inspector General may issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence relating to any matter under investigation by the Inspector General.

(B) If a person refuses to obey a subpoena issued under subparagraph (A) of this paragraph, the Inspector General may apply to the Superior Court of the District of Columbia for an order requiring that person to appear before the Inspector General to give testimony, produce evidence, or both, relating to the matter under investigation. Any failure to obey the order of the court may be punished by the Superior Court as civil contempt.

(3) The Inspector General is authorized to administer to or take from any person an oath, affirmation, or affidavit, whenever necessary to perform the Inspector General's duties. The Inspector General is authorized to delegate the power to administer to or take from any person an oath, affirmation, or affidavit, when he or she deems it appropriate.

(d)(1) The Inspector General shall compile for submission to the Authority (or, with respect to a fiscal year which is not a control year, the Mayor and the Council), at least once every fiscal year, a report setting forth the scope of the Inspector General's operational audit, and a summary of all findings and determinations made as a result of the findings.

(2) Included in the report shall be any comments and information necessary to keep the Authority, the Mayor and the Council informed of the adequacy and effectiveness of procurement operations, the integrity of the procurement process, and adherence to the provisions of this chapter.

(3) The report shall contain any recommendations deemed advisable by the Inspector General for improvements to procurement operations and compliance with the provisions of this chapter.

(4) The Inspector General shall make each report submitted under this subsection available to the public, except to the extent that the report contains information determined by the Inspector General to be privileged.

(e) The Inspector General may undertake reviews and investigations, and make determinations or render opinions as requested by the Authority. Any reports generated as a result of the requests shall be automatically transmitted to the Council within 10 days of publication.

(e-1) The Inspector General may conduct an annual inspection and independent fiscal and management audit of the District of Columbia Housing Authority, beginning the first fiscal year of the Authority. In addition, the Inspector General may undertake reviews and investigations of the District of Columbia Housing Authority, and make determinations or render opinions, as requested by the Council.

(f) In carrying out the duties and responsibilities established under this section, the Inspector General shall report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal or District criminal law.

(f-1) An employee of the Office of the Inspector General who, as part of his or her official duties, conducts investigations of alleged felony violations, shall possess the following authority while engaged in the performance of official duties:

(1) To carry a firearm within the District of Columbia or a District government facility located outside of the District, provided that the employee has completed a course of training in the safe handling of firearms and the use of deadly force, and is qualified to use a firearm according to the standards applicable to officers of the Metropolitan Police Department. The employee may not carry a firearm in the course of official duties unless designated by the Inspector General in writing as having the authority to carry a firearm. The Inspector General shall issue written guidelines pertaining to the authority to carry firearms, the appropriate use of firearms, firearms issuance and security, and the use of force;

(2) To make an arrest without a warrant if the employee has probable cause to believe that a felony violation of a federal or District of Columbia statute is being committed in his or her presence, provided that the arrest is made while the employee is engaged in the performance of his or her official duties within the District of Columbia or a District government facility located outside of the District; and

(3) To serve as an affiant for, to apply to an appropriate judicial officer for, and execute a warrant for the search of premises or the seizure of evidence if the warrant is issued under authority of the District of Columbia or of the United States upon probable cause.

(f-2) The Inspector General shall prepare an annual report not later than December 1st of each year, summarizing the activities of the Office of the Inspector General during the preceding fiscal year.

(f-3) Failure on the part of any District government employee or contractor to cooperate with the Inspector General by not providing requested documents or testimony needed for the performance of his or her duties in conducting an audit, inspection or investigation shall be cause for the Inspector General to recommend appropriate administrative actions to the personnel or procurement authority, and shall be grounds for adverse actions as administered by

the personnel or procurement authority, including the loss of employment or the termination of an existing contractual relationship.

(f-4) Anyone who has the authority to take or direct others to take, recommend, or approve any personnel action, shall not, with respect to this authority, take or threaten to take any action against another as a reprisal for making a complaint or disclosing information to the Inspector General, unless the complaint was made or the information disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

(f-5) A peer review of the Office of the Inspector General's audit, inspection and investigation sections' standards, policies, procedures, operations, and quality controls shall be performed no less than once every 3 years by an entity not affiliated with the Office of the Inspector General. Any final report shall be distributed to the Mayor, the Council and the Financial Responsibility and Management Assistance Authority.

(g) In this section:

(1) The term "Authority" means the District of Columbia Financial Responsibility and Management Assistance Authority established under § 47-391.01(a);

(2) The term "control year" has the meaning given such term under § 47-393(4); and

(3) The term "District government" has the meaning given such term under § 47-393(5).

(Feb. 21, 1986, D.C. Law 6-85, § 208, 32 DCR 7396; Mar. 16, 1989, D.C. Law 7-201, § 5, 36 DCR 248; Apr. 17, 1995, 109 Stat. 148-151, Pub. L. 104-8, § 303(a)-(d); Apr. 9, 1997, D.C. Law 11-255, § 5, 44 DCR 1271; Aug. 5, 1997, 111 Stat. 777, Pub. L. 105-33, § 11601(b)(3); Oct. 21, 1998, 112 Stat. 2681-148, Pub. L. 105-277, § 160; Mar. 26, 1999, D.C. Law 12-190, § 2, 45 DCR 7814; April 5, 2000, D.C. Law 13-71, § 2, 46 DCR 10403; May 9, 2000, D.C. Law 13-105, § 29(a), 47 DCR 1325; Nov. 22, 2000, 114 Stat. 2440, Pub. L. 106-552, § 164(a); June 19, 2001, D.C. Law 13-313, § 4(b), 48 DCR 1873; July 30, 2003, D.C. Law 15-26, § 2, 50 DCR 4651; Dec. 7, 2004, D.C. Law 15-212, § 2(a), 51 DCR 8820; Oct. 16, 2006, 120 Stat. 2043, Pub. L. 109-356, § 308(b); Mar. 14, 2007, D.C. Law 16-267, § 2, 54 DCR 831.)

Cross references. — District of Columbia administration, personnel management, "subordinate agency" defined, see § 1-603.01.

District of Columbia fiscal management, intermediate-term advances for liquidation of deficit, certification of and compliance with an approved financial plan and budget, see § 47-3401.01.

District of Columbia fiscal management, short-term advances for seasonal cash-flow management, certification of and compliance with an approved financial plan and budget, see § 47-3401.02.

Financial Responsibility and Management Assistance Authority, consent to appointment of the Inspector General, see § 47-391.01.

Prior Codifications. — 2001 Ed., § 2-302.08

1981 Ed., § 1-1182.8.

Effect of amendments. — Public Law 106-522, § 164(a), in subpar. (a)(4)(A), inserted "except as may be provided in paragraph (5)"; and added par. (a)(5).

Section 164(b) of Public Law 106-522 provided: "The amendment made by subsection (a) shall apply with respect to financial statements and reports for activities of the District of Columbia Government for fiscal years beginning with fiscal year 2001."

D.C. Law 13-71 inserted subsec. (a-1); in par. (a)(3), rewrote subpars. (B), (D), and (F), which previously read:

“(B) Act as liaison representative for the Mayor for all external audits of the District government;”

“(D) Conduct other special audits, assignments, and investigations the Mayor shall assign;”

“(F) Forward to the Mayor and the appropriate authority any evidence of criminal wrongdoing, that is discovered as a result of any investigation or audit conducted by the office;”;

rewrote subsec. (b), which previously read:

“In determining the procedures to be followed and the extent of the examinations of invoices, documents, and records, the Inspector General shall give due regard to the provisions of this chapter, as well as generally accepted accounting and procurement principles, practices, and procedures, including, but not limited to, federal and District government case law, decisions of the U.S. Comptroller General, and decisions of federal contract appeals boards.”;

inserted subsec. (b-1); rewrote par. (1) of subsec. (c), which previously read:

“The Inspector General shall have access to all books, accounts, records, reports, findings, and all other papers, things, or property belonging to or in use by any department or agency under the direct supervision of the Mayor necessary to facilitate the Inspector General’s work.”;

added par. (3) of subsec. (c); and added subsecs. (f-2) to (f-5).

D.C. Law 13-105 inserted subsec. (e-1).

D.C. Law 13-313 rewrote subsec. (f-2), which prior thereto read:

“(f-2) The Inspector General shall prepare an annual report not later than 30 days after the beginning of the fiscal year, beginning with FY 2001, summarizing the activities of the Office of Inspector General during the preceding fiscal year. Upon its completion, the Inspector General shall transmit the report to the Mayor, the Council, and the appropriate committees or subcommittees of Congress. The Inspector General shall make copies of the report available to the public upon request. The annual report shall include:”

D.C. Law 15-26, in subsec. (a)(1), rewrote the third sentence of subpar. (A), added subpar. (A-1), rewrote subpar. (D), and added subpar. (D-i). Prior to amendment, the third sentence of subsec. (a)(1)(A) had read “The Inspector General may be reappointed for additional terms.”; and subsec. (a)(1)(D) had read as follows: “(D) The Inspector General shall be appointed without regard to party affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial management analysis, public administration, or investigations.”

D.C. Law 15-212 added subpars. (A-ii) to subsec. (a)(1).

Pub. L. 109-356 added subsec. (a)(3)(J).

D.C. Law 16-267 rewrote subsec. (a)(1)(E), which formerly read:

“(E) The Inspector General shall be paid at an annual rate determined by the Mayor, except that such rate may not exceed the rate of basic pay payable for level IV of the Executive Schedule.”

Temporary Amendment of Section. —

For temporary (225 day) amendment of section, see § 2 of the Office of the Inspector General Law Enforcement Powers Temporary Amendment Act of 1998, (D.C. Law 12-177, March 26, 1999, law notification 46 DCR 3403).

For temporary (225 day) amendment of section, see § 2 of the Inspector General Qualifications Temporary Amendment Act of 2003 (D.C. Law 15-22, June 21, 2003, law notification 50 DCR 5466).

For temporary (225 day) amendment of section, see § 2 of the Inspector General Appointment and Term Clarification Temporary Amendment Act of 2003 (D.C. Law 15-101, March 10, 2004, law notification 51 DCR 3621).

Emergency legislation. — For temporary amendment of section, see § 2 of the Office of the Inspector General Law Enforcement Powers Emergency Amendment Act of 1998 (D.C. Act 12-394, July 6, 1998, 45 DCR 4645), § 2 of the Office of the Inspector General Law Enforcement Powers Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-463, October 28, 1998, 45 DCR 7818), and § 2 of the Office of the Inspector General Law Enforcement Powers Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-3, February 8, 1999, 46

Legislative history of Law 6-85. — For legislative history of D.C. Law 6-85, see Historical and Statutory Notes following § 2-301.01.

Legislative history of Law 7-201. — Law 7-201 was introduced in Council and assigned Bill No. 7-95, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 15, 1988 and November 29, 1988, respectively. Signed by the Mayor on December 23, 1988, it was assigned Act No. 7-271 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-255. — Law 11-255, the “Second Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Legislative history of Law 12-190. — Law 12-190, the “Office of the Inspector General Law Enforcement Powers Amendment Act of

1998,” was introduced in Council and assigned Bill No. 12-622, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on July 7, 1998, and September 22, 1998, respectively. Signed by the Mayor on October 2, 1998, it was assigned Act No. 12-461 and transmitted to both Houses of Congress for its review. D.C. Law 12-190 became effective on March 26, 1999.

Legislative history of Law 13-105. — Law 13-105, the “District of Columbia Housing Authority Act of 1999,” was introduced in Council and assigned Bill No. 13-169, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 7, 1999, and December 21, 1999, respectively. Signed by the Mayor on January 18, 2000, it was assigned Act No. 13-254 and transmitted to both Houses of Congress for its review. D.C. Law 13-105 became effective on May 9, 2000.

Legislative history of Law 13-71. — Law 13-71, the “Office of the Inspector General Powers and Duties Amendment Act of 1999,” was introduced in Council and assigned Bill No. 13-143, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on September 21, 1999, and October 5, 1999, respectively. Signed by the Mayor on October 25, 1999, it was assigned Act No. 13-181 and transmitted to both Houses of Congress for its review. D.C. Law 13-71 became effective on April 5, 2000.

Legislative history of Law 13-313. — For D.C. Law 13-313, see notes following § 2-301.05.

Legislative history of Law 15-26. — Law 15-26, the “Inspector General Qualifications Amendment Act of 2003,” was introduced in Council and assigned Bill No. 15-183, which was referred to the Committee of the Whole. The Bill was adopted on first and second read-

ings on April 1, 2003, and May 6, 2003, respectively. The bill was vetoed by the Mayor on May 16, 2003, but overridden by Council on June 3, 2003, and was assigned Act No. 15-94 and transmitted to Both Houses of Congress for its review. D.C. Law 15-26 became effective on July 30, 2003.

Legislative history of Law 15-212. — Law 15-212, the “Inspector General Appointment and Term Clarification Amendment Act of 2004,” was introduced in Council and assigned Bill No. 15-566, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 29, 2004, and July 13, 2004, respectively. Signed by the Mayor on August 2, 2004, it was assigned Act No. 15-503 and transmitted to both Houses of Congress for its review. D.C. Law 15-212 became effective on December 7, 2004.

Legislative history of Law 16-267. — Law 16-267, the “Rate of Pay for the Position of Inspector General for the Office of the Inspector General Amendment Act of 2006,” was introduced in Council and assigned Bill No. 16-525, which was referred to Committee on Government Operations. The Bill was adopted on first and second readings on December 5, 2006, and December 19, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-623 and transmitted to both Houses of Congress for its review. D.C. Law 16-267 became effective on March 14, 2007.

References in text. — The Individuals with Disabilities Education Act, referred to in subsec. (a)(3)(J), is codified at 20 U.S.C. § 1400 et seq.

Editor’s notes. — Office of Inspector: Section 155 of P.L. 105-100 provided for creation of the Office of the Inspector General.

Applicability of § 2(b) of Law 15-212: Section 3 of Law 15-212 provided that section 2(b) of this act shall apply upon its enactment by the United States Congress.

CASE NOTES

In general.

Statute providing that District of Columbia Office of the Inspector General (OIG) was to “give due regard” to generally accepted accounting principles, while performing its auditing functions, did not mandate that OIG follow Generally Accepted Government Audit Standards (GAGAS). D.C. Code 1981, § 1-1182.8. *Trifax Corp. v. District of Columbia*, 53 F.Supp.2d 20, 1999 U.S. Dist. LEXIS 9089 (1999), affirmed by 314 F.3d 641, 354 U.S. App. D.C. 200, 2003 U.S. App. LEXIS 461 (2003).

Contracting officers for various District of Columbia agencies were protected by qualified immunity from suit brought by contractor furnishing nursing services, alleging that they

terminated contracts with contractor based upon reliance on erroneous report regarding contractor published by District’s Office of Inspector General (OIG), even though contractor alleged noncompliance with Generally Accepted Government Audit Standards (GAGAS); statute under which report was issued did not require compliance with GAGAS. D.C. Code 1981, § 1-1182.8. *Trifax Corp. v. District of Columbia*, 53 F.Supp.2d 20, 1999 U.S. Dist. LEXIS 9089 (1999), affirmed by 314 F.3d 641, 354 U.S. App. D.C. 200, 2003 U.S. App. LEXIS 461 (2003).

Resignation of incumbent Inspector General of the District of Columbia rendered moot appeal in which District of Columbia Court of

Appeals was to determine whether the Inspector General Qualifications Amendment Act's new qualifications could be applied to incum-

bent. *Cropp v. Williams*, 841 A.2d 328, 2004 D.C. App. LEXIS 35 (2004).

§ 1-301.115b. Deadline for appointment of Inspector General.

(a) *In general.* — Not later than 30 days after its members are appointed, the Mayor shall appoint the Inspector General of the District of Columbia pursuant to § 1-301.115a(a)(1).

(b) *Transition rule.* — The term of service of the individual serving as the Inspector General under § 1-301.115a(a) prior to the appointment of the Inspector General by the Authority under §§ 1-301.115a(a)(1) shall expire upon the appointment of the Inspector General by the Authority.

(Apr. 17, 1995, 109 Stat. 151, Pub. L. 104-8, § 303(e); Aug. 5, 1997, 111 Stat. 782, Pub. L. 105-33, § 11711(b).)

Prior Codifications. — 2001 Ed., § 2-321.01

1981 Ed., § 1-1182.8a.

References in text. — 'Its members', re-

ferred to in subsec. (a), are the members of the District of Columbia Financial Responsibility and Management Assistance Authority.

Part G

AUTHORITY TO PARTICIPATE IN MULTISTATE EFFORTS TO DEVELOP SALES AND USE TAXES.

§ 1-301.121. Definitions.

For the purposes of this part, the term:

(1) "Agreement" means the Streamlined Sales and Use Tax Agreement as amended and adopted on January 27, 2001.

(2) "Certified Automated System" means software certified jointly by the states that are signatories to the Agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.

(3) "Certified Service Provider" means an agent certified jointly by the states that are signatories to the Agreement to perform all of the seller's sales tax functions.

(4) "Person" means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.

(5) "Sales Tax" means the tax levied under Chapter 20 of Title 47.

(6) "Seller" means any person making sales, leases, or rentals of personal property or services.

(7) "State" means any state of the United States and the District of Columbia.

(8) "Use Tax" means the tax levied under Chapter 22 of Title 47.

(June 25, 2002, D.C. Law 14-156, § 2, 49 DCR 4272.)

Temporary Addition of Section. — Sections 2 and 3 of D.C. Law 18-59 added sections to read as follows:

“Sec. 2. Appointments to National Conference of Commissioners on Uniform State Laws.

“(a) The official commissioners of the District of Columbia to the National Conference of Commissioners on Uniform State Laws (‘NCCUSL’) shall be members of the District of Columbia Bar, and shall be appointed as follows:

“(1) Three commissioners shall be appointed by the Mayor;

“(2) One commissioner shall be appointed by the Chairman of the Council; and

“(3) One commissioner shall be appointed by the Chief Judge of the Superior Court of the District of Columbia.

“(b) Each commissioner appointed pursuant to subsection (a) of this section shall serve a term of 3 years, beginning on July 1 of the year of appointment, and shall serve until his or her successor is appointed.

“(c) In addition to the 5 members appointed under this section, the following persons shall be members of the Commission:

“(1) Any resident of the District of Columbia who, because of long service in the cause of the uniformity of state legislation, shall have been elected a life member of the NCCUSL; and

“(2) The General Counsel to the Council of the District of Columbia, or his or her designee.

“(d) A person serving as a NCCUSL commissioner as of the effective date of this act may continue to serve until the expiration of his or her term, or until a successor has been appointed, whichever occurs later.

“Sec. 3. Duties of commissioners.

“(a) The commissioners shall advise the Mayor and the Council, and Council committees, concerning:

“(1) Proposals for uniform and model state laws;

“(2) The effect that the proposals would have on the laws of the District of Columbia; and

“(3) Other matters pertinent to desirable uniformity in legislation between the District and other jurisdictions.

“(b) Each commissioner shall attend the meetings of the NCCUSL and, both within and out of the NCCUSL, do all in his or her power to promote uniformity in state laws in all subjects in which uniformity is desirable and practicable.

“(c) The commissioners shall report to the Council after each annual meeting, and from time to time thereafter as the commissioners consider proper.”

Section 5(b) of D.C. Law 18-59 provided that the act shall expire after 225 days of its having taken effect.

Sections 2 and 3 of D.C. Law 18-215 added sections to read as follows:

“Sec. 2. Appointments to National Conference of Commissioners on Uniform State Laws.

“(a) The official commissioners of the District of Columbia to the National Conference of Commissioners on Uniform State Laws (‘NCCUSL’) shall be members of the District of Columbia Bar, and shall be appointed as follows:

“(1) Three commissioners shall be appointed by the Mayor;

“(2) One commissioner shall be appointed by the Chairman of the Council; and

“(3) One commissioner shall be appointed by the Chief Judge of the Superior Court of the District of Columbia.

“(b) Each commissioner appointed pursuant to subsection (a) of this section shall serve a term of 3 years, beginning on July 1 of the year of appointment, and shall serve until his or her successor is appointed.

“(c) In addition to the 5 members appointed under this section, the following persons shall be members of the NCCUSL:

“(1) Any resident of the District of Columbia who, because of long service in the cause of the uniformity of state legislation, shall have been elected a life member of the NCCUSL; and

“(2) The General Counsel to the Council of the District of Columbia, or his or her designee.

“(d) A person serving as a NCCUSL commissioner as of the effective date of this act may continue to serve until the expiration of his or her term, or until a successor has been appointed, whichever occurs later.

“Sec. 3. Duties of commissioners.

“(a) The commissioners shall advise the Mayor and the Council, and Council committees, concerning:

“(1) Proposals for uniform and model state laws;

“(2) The effect that the proposals would have on the laws of the District of Columbia; and

“(3) Other matters pertinent to desirable uniformity in legislation between the District and other jurisdictions.

“(b) Each commissioner shall attend the meetings of the NCCUSL and, both within and out of the NCCUSL, do all in his or her power to promote uniformity in state laws in all subjects in which uniformity is desirable and practicable.

“(c) The commissioners shall report to the Council after each annual meeting, and from time to time thereafter as the commissioners consider proper.”

Section 5(b) of D.C. Law 18-215 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 1132 of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

For temporary (90 day) additions, see §§ 2 and 3 of Commission on Uniform State Laws Appointment Authorization Emergency Act of 2009 (D.C. Act 18-132, July 6, 2009, 56 DCR 5692).

For temporary (90 day) additions, see §§ 2 and 3 of Commission on Uniform State Laws Appointment Authorization Emergency Act of 2010 (D.C. Act 18-403, May 19, 2010, 57 DCR 4508).

For temporary (90 day) additions, see §§ 2

and 3 of Commission on Uniform State Laws Appointment Authorization Congressional Review Emergency Act of 2010 (D.C. Act 18-503, July 30, 2010, 57 DCR 7576).

Legislative history of Law 14-156. — Law 14-156, the “Simplified Sales and Use Tax Participation Act of 2002”, was introduced in Council and assigned Bill No. 14-420, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on March 5, 2002, and April 9, 2002, respectively. Signed by the Mayor on April 24, 2002, it was assigned Act No. 14-335 and transmitted to both Houses of Congress for its review. D.C. Law 14-156 became effective on June 25, 2002.

§ 1-301.122. Authority to participate in multistate negotiations.

(a) For the purposes of reviewing or amending the Agreement embodying the simplification requirements as contained in § 1-301.125, the District of Columbia shall enter into multistate discussions. For purposes of the discussions, the District of Columbia shall be represented by 4 delegates.

(b) The Mayor shall appoint one delegate to serve at the pleasure of the Mayor.

(c) The Chairman of the Council shall appoint one delegate to serve at the pleasure of the Chairman of the Council.

(d) The Chief Financial Officer of the District of Columbia (“Chief Financial Officer”) shall appoint one delegate to serve at the pleasure of the Chief Financial Officer.

(e) The Council on State Taxation shall appoint one tax counsel to serve as a delegate of the District of Columbia. The Council on State Taxation shall notify the Mayor and the Chairman of the Council of the appointment by registered mail.

(June 25, 2002, D.C. Law 14-156, § 3, 49 DCR 4272; Mar. 13, 2004, D.C. Law 15-105, § 16, 51 DCR 881.)

Effect of amendments. — D.C. Law 15-105, in subsec. (a), validated a previously made technical correction.

Legislative history of Law 14-156. — For Law 14-156, see notes following § 1-301.121.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 1-301.47.

§ 1-301.123. Authority to enter into agreement.

(a) The Chief Financial Officer may enter into the Agreement with one or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. In furtherance of the Agreement, the Chief Financial Officer may act jointly with other states that are members of the Agreement to establish standards for certification of a Certified Service Provider and

Certified Automated System and establish performance standards for multistate sellers.

(b) The Chief Financial Officer may take other actions reasonably required to implement the provisions set forth in this part. Other actions authorized by this section include the adoption of rules and regulations and the joint procurement, with other member states, of goods and services in furtherance of the cooperative agreement.

(c) The Chief Financial Officer, or his or her designee, may represent the District of Columbia before the other states that are signatories to the Agreement.

(June 25, 2002, D.C. Law 14-156, § 4, 49 DCR 4272.)

Legislative history of Law 14-156. — For Law 14-156, see notes following § 1-301.121.

§ 1-301.124. Relationship to District of Columbia law.

No provision of the Agreement shall, in whole or part, invalidate or amend any provision of the law of the District of Columbia. Adoption of the Agreement by the District of Columbia shall not amend or modify any law of the District of Columbia. Implementation of any condition of the Agreement in the District of Columbia, whether adopted before, at, or after membership of the District of Columbia in the Agreement, shall be by the action of the Council.

(June 25, 2002, D.C. Law 14-156, § 5, 49 DCR 4272.)

Legislative history of Law 14-156. — For Law 14-156, see notes following § 1-301.121.

§ 1-301.125. Agreement requirements.

The Chief Financial Officer shall not enter into the Streamlined Sales and Use Tax Agreement unless the Agreement addresses the following issues:

(1) The Agreement shall set restrictions to limit over time the number of state rates.

(2) The Agreement shall establish uniform standards for the sourcing of transactions to taxing jurisdictions; the administration of exempt sales; and sales and use tax returns and remittances.

(3) The Agreement shall provide a central, electronic registration system that allows a seller to register to collect and remit sales and use taxes for all signatory states.

(4) The Agreement shall provide that registration with the central registration system and the collection of sales and use taxes in the signatory states will not be used as a factor in determining whether the seller has nexus with a state for any tax.

(5) The Agreement shall provide for reduction of the burdens of complying with local sales and use taxes through the following:

(A) Restricting variances between the state and local tax bases;

(B) Requiring states to administer any sales and use taxes levied by

local jurisdictions within the state so that sellers collecting and remitting these taxes will not have to register or file returns with, remit funds to, or be subject to independent audits from local taxing jurisdictions;

(C) Restricting the frequency of changes in the local sales and use tax rates and setting effective dates for the application of local jurisdictional boundary changes to local sales and use taxes; and

(D) Providing notice of changes in local sales and use tax rates and of changes in the boundaries of local taxing jurisdictions.

(6) The Agreement shall outline any monetary allowances that are to be provided by the states to sellers or Certified Service Providers. The Agreement shall allow for a joint public and private sector study of the compliance cost on sellers and Certified Service Providers to collect sales and use taxes for state and local governments under various levels of complexity to be completed by July 1, 2002.

(7) The Agreement shall require each state to certify compliance with the terms of the Agreement prior to joining and to maintain compliance, under the laws of the member state, with all provisions of the Agreement while a member.

(8) The Agreement shall require each state to adopt a uniform policy for Certified Service Providers that protects the privacy of consumers and maintains the confidentiality of tax information.

(9) The Agreement shall provide for the appointment of an advisory council of private sector representatives and an advisory council of non-member state representatives to consult with in the administration of the Agreement.

(June 25, 2002, D.C. Law 14-156, § 6, 49 DCR 4272.)

Legislative history of Law 14-156. — For Law 14-156, see notes following § 1-301.121.

§ 1-301.126. Cooperating sovereigns.

The Agreement is an accord among individual cooperating sovereigns in furtherance of their governmental functions. The Agreement provides a mechanism among the member states to establish and maintain a cooperative, simplified system for the application and administration of sales and use taxes under the duly adopted law of each member state.

(June 25, 2002, D.C. Law 14-156, § 7, 49 DCR 4272.)

Legislative history of Law 14-156. — For Law 14-156, see notes following § 1-301.121.

§ 1-301.127. Limited binding and beneficial effect.

(a) The Agreement shall bind and inure only to the benefit of the District of Columbia and the other member states. No person, other than a member state, is an intended beneficiary of the Agreement. Any benefit to a person other than

a state shall be established by the law of the District of Columbia and the other member states and not by the terms of the Agreement.

(b) Consistent with subsection (a) of this section, no person shall have any cause of action or defense under the Agreement or by virtue of the District of Columbia's approval of the Agreement. No person may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of the District of Columbia, or any political subdivision of the District of Columbia, on the ground that the action or inaction is inconsistent with the Agreement.

(c) No law of the District of Columbia, or the application thereof, shall be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the Agreement.

(June 25, 2002, D.C. Law 14-156, § 8, 49 DCR 4272.)

Legislative history of Law 14-156. — For Law 14-156, see notes following § 1-301.121.

§ 1-301.128. Seller and third party liability.

(a) A Certified Service Provider shall be the agent of a seller, with whom the Certified Service Provider has contracted, for the collection and remittance of sales and use taxes. As the seller's agent, the Certified Service Provider shall be liable for sales and use tax due each member state on all sales transactions it processes for the seller except as set forth in this section. A seller that contracts with a Certified Service Provider shall not be liable to the state for sales or use tax due on transactions processed by the Certified Service Provider unless the seller misrepresented the type of items it sells or committed fraud. In the absence of probable cause to believe that the seller has committed fraud or made a material misrepresentation, the seller shall not be subject to audit on the transactions processed by the Certified Service Provider. A seller shall be subject to audit for transactions not processed by the Certified Service Provider. The member states acting jointly may perform a system check of the seller and review the seller's procedures to determine if the Certified Service Provider's system is functioning properly and the extent to which the seller's transactions are being processed by the Certified Service Provider.

(b) A person that provides a Certified Automated System shall be responsible for the proper functioning of that system and shall be liable to the state for underpayments of tax attributable to errors in the functioning of the Certified Automated System. A seller that uses a Certified Automated System remains responsible and shall be liable to the state for reporting and remitting tax.

(c) A seller that has a proprietary system for determining the amount of tax due on transactions and has signed an agreement establishing a performance standard for that system shall be liable for the failure of the system to meet the performance standard.

(June 25, 2002, D.C. Law 14-156, § 9, 49 DCR 4272.)

Emergency legislation. — For temporary (90 day) addition of § 1-301.141, see § 3102 of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

Legislative history of Law 14-156. — For Law 14-156, see notes following § 1-301.121.

Part H

CHIEF FINANCIAL OFFICER FOR THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT.

§ 1-301.141. Chief Financial Officer for the Department of Housing and Community Development.

(a) The Chief Financial Officer shall appoint a chief financial officer for the Department of Housing and Community Development (“Department”), with the approval of the Director of the Department, to provide services solely to the Department. The chief financial officer for the Department shall not be the chief financial officer for any other executive branch office or agency. The chief financial officer for the Department shall have significant knowledge of, and experience with, programs the Department administers in conjunction with the United States Department of Housing and Urban Development.

(b) The Chief Financial Officer shall make the appointment under subsection (a) of this section at the earlier of the following:

(1) When the Chief Financial Officer conducts the reorganization of the Office of Chief Financial Officer; or

(2) December 1, 2002.

(Oct. 1, 2002, D.C. Law 14-190, § 1132, 49 DCR 6968.)

Legislative history of Law 14-190. — Law 14-190, the “Fiscal Year 2003 Budget Support Act of 2002”, was introduced in Council and assigned Bill No. 14-609, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 7, 2002, and June 4, 2002, respectively. Signed by the Mayor on July 3, 2002, it was assigned Act No. 14-403 and transmitted to both Houses of

Congress for its review. D.C. Law 14-190 became effective on October 1, 2002.

Short title. — Short title of subtitle C of title XI of Law 14-190: Section 1131 of D.C. Law 14-190 provided that subtitle C of title XI of the act may be cited as the Chief Financial Officer for the Department of Housing and Community Development Act of 2002.

Part I

CHIEF FINANCIAL OFFICER HEALTH CARE ANALYSIS AND OVERTIME PLAN.

§ 1-301.151. Analysis of health care costs at Department of Corrections; plan to create Public Safety Overtime Bank.

In Fiscal Year 2003, the Chief Financial Officer shall:

(1) Analyze health care costs at the Department of Corrections and recommend alternatives based on the analysis; and

(2) Develop a plan to create a Public Safety Overtime Bank that would fund and oversee overtime expenditures by the Metropolitan Police Department, Fire and Emergency Medical Services Department, and the Department of Corrections.

(Oct. 1, 2002, D.C. Law 14-190, § 3202, 49 DCR 6968.)

Legislative history of Law 14-190. — Law 14-190, the “Fiscal Year 2003 Budget Support Act of 2002”, was introduced in Council and assigned Bill No. 14-609, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 7, 2002, and June 4, 2002, respectively. Signed by the Mayor on July 3, 2002, it was assigned Act

No. 14-403 and transmitted to both Houses of Congress for its review. D.C. Law 14-190 became effective on October 1, 2002.

Short title. — Short title of title XXXII of Law 14-190: Section 3201 of D.C. Law 14-190 provided that title XXXII of the act may be cited as the Chief Financial Officer Fiscal Year 2003 Duties Act of 2002.

Part J

DISTRICT OF COLUMBIA AUDITOR SUBPOENA AND OATH AUTHORITY.

§ 1-301.171. Subpoena power.

The District of Columbia Auditor may subpoena witnesses, compel the attendance and testimony of witnesses, and require the production of any records, including books, papers, documents, and any other evidence relating to any matter under investigation by the District of Columbia Auditor.

(Apr. 22, 2004, D.C. Law 15-146, § 2, 51 DCR 2597.)

Legislative history of Law 15-146. — Law 15-146, the “District of Columbia Auditor Subpoena and Oath Authority Act of 2004”, was introduced in Council and assigned Bill No. 15-394, which was referred to Committee on the Whole. The Bill was adopted on first and

second readings on January 6, 2004, and February 3, 2004, respectively. Signed by the Mayor on February 19, 2004, it was assigned Act No. 15-367 and transmitted to both Houses of Congress for its review. D.C. Law 15-146 became effective on April 22, 2004.

§ 1-301.172. Refusal to obey subpoena.

(a) In a case of contumacy or refusal to obey a subpoena issued to a person under § 1-301.171, the Auditor may apply to the Superior Court of the District of Columbia for an order requiring the contumacious person to appear relating to the matter under investigation. Failure to obey the Court’s order shall be punishable as contempt of court.

(b) If the District of Columbia Auditor prevails, in whole or in part, in an application to the Superior Court of the District of Columbia in a suit to enforce a subpoena issued pursuant to § 1-301.171, the District of Columbia Auditor may be awarded reasonable attorney fees and other costs of litigation.

(c) If the District of Columbia Auditor prevails, in whole or in part, in an application to the Superior Court of the District of Columbia in a suit to enforce

a subpoena issued pursuant to § 1-301.171 and is not awarded reasonable attorney's fees, the District government agency or instrumentality challenging the enforcement order shall reimburse the District of Columbia Auditor for any litigation-related expenses or costs incurred.

(Apr. 22, 2004, D.C. Law 15-146, § 3, 51 DCR 2597; Mar. 11, 2010, D.C. Law 18-119, § 4(a), 57 DCR 906.)

Effect of amendments. — D.C. Law 18-119 designated the existing text as subsec. (a); and added subsecs. (b) and (c).

Legislative history of Law 15-146. — For Law 15-146, see notes following § 1-301.171.

Legislative history of Law 18-119. — For Law 18-119, see notes following § 1-301.44c.

§ 1-301.173. Administration of oaths.

The District of Columbia Auditor, or a delegate authorized by the Auditor, may administer oaths, affirmations, or take affidavits, whenever necessary to perform the duties of the Auditor.

(Apr. 22, 2004, D.C. Law 15-146, § 4, 51 DCR 2597.)

Legislative history of Law 15-146. — For Law 15-146, see notes following § 1-301.171.

§ 1-301.174. District of Columbia Auditor Legal Fund.

(a) There is established as a nonlapsing fund the District of Columbia Auditor Legal Fund ("Fund"), which shall be administered by the District of Columbia Auditor for the purpose of enforcing the District of Columbia Auditor's subpoena power.

(b) There shall be deposited into the Fund all fees awarded and expenses or costs reimbursed pursuant to § 1-301.172(b) or (c), and any other funds required by law to be deposited into the Fund.

(c) Funds deposited to the Fund shall be used for the purpose of subpoena enforcement against a District government agency or instrumentality challenging the District of Columbia Auditor's subpoena authority. All funds deposited into the Fund, and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the purpose set forth in this section without regard to fiscal year limitation, subject to authorization by Congress.

(Mar. 25, 1977, D.C. Law 1-96, § 4a, as added Mar. 11, 2010, D.C. Law 18-119, § 4(b), 57 DCR 906.)

Legislative history of Law 18-119. — For Law 18-119, see notes following § 1-301.44c.

Part K

DISTRICT OF COLUMBIA AUDITOR COMPLIANCE UNIT.

§ 1-301.181. Establishment of a compliance unit.

(a) There is established a compliance unit (“Unit”) within the Office of the District of Columbia Auditor.

(b) The Unit shall:

(1) Conduct an audit and report on compliance related to real estate development transactions, agreements, or parcels (‘projects’) receiving government assistance, which were previously managed by the dissolved National Capital Revitalization Corporation and Anacostia Waterfront Corporation and placed under the management of the Office of the Deputy Mayor for Planning and Economic Development, pursuant to the National Capital Revitalization Corporation and Anacostia Waterfront Corporation Reorganization Act of 2008, effective March 26, 2008 (D.C. Law 17-138; D.C. Official Code § 2-1225.01 et seq.);

(2) Monitor agency contracting and procurement activities to the extent those activities are related to the achievement of the goals set forth in § 2-218.41;

(3) Review quarterly and annual reports required by §§ 2-218.50 and 2-218.53 of each agency;

(4) Monitor third-party contracting and procurement activities to the extent those activities are related to contracting with, and procuring from, certified business enterprises; and

(5) Review any reports as may be required of third parties.

(c) For the purposes of this part, the term “government assistance” means a grant, loan, tax increment financing, or other financial assistance that results in a financial benefit from an agency, commission, instrumentality, or other entity of the District government. The term “government assistance” may also include PILOT financing, a Tax Abatement, a Tax Incentive, or a discounted lease or sale price for District-owned land.

(d) The Unit’s audit shall focus on the following compliance requirements:

(1) Requirements related to developer selection and performance guidelines, as defined in the Mayor’s source-selection process;

(2) Requirements related to selection of goods and services, as defined in Unit A of Chapter 3 of Title 2 [§ 2-301.01 et seq.];

(3) Requirements related to living-wage laws pursuant to subchapter X-A of Chapter 2 of Title 2 [§ 2-220.01 et seq.];

(4) Requirements related to contracting with, and procuring goods and services from, Certified Business Enterprises (“CBEs”) pursuant to subchapter IX-A of Chapter 2 of Title 2 [§ 2-218.01 et seq.]; (“SLDBE Assistance Act”);

(5) Requirements related to equity and development participation by CBEs pursuant to the SLDBE Assistance Act;

(6) Requirements related to environmental standards, including Chapter 14A of [§ 6-1451.01 et seq.], Title 6, part B of subchapter XIV of Chapter 12 of

Title 2 [§ 2-1226.31 et seq.]; and where applicable, the Leadership in Energy and Environmental Design (“LEED”) Green Building Rating System; and

(7) Requirements related to affordable housing mandates, including subchapter II-A of Chapter 10 of Title 6 [§ 6-1041.01 et seq.], the Community Development Block Grant, the Housing Production Trust Fund, the Home Investment Partnerships Program, and the Low-Income Housing Tax Credit program, as applicable.

(June 13, 2008, D.C. Law 17-176, § 2, 55 DCR 5390; Mar. 3, 2010, D.C. Law 18-111, § 2221(a), 57 DCR 181.)

Effect of amendments. — D.C. Law 18-111 rewrote subsec. (b), which had read as follows: “(b) The Unit shall conduct an audit and report on compliance related to real estate development transactions, agreements, or parcels (‘projects’) receiving government assistance, which were previously managed by the dissolved National Capital Revitalization Corporation and Anacostia Waterfront Corporation and placed under the management of the Office of the Deputy Mayor for Planning and Economic Development, pursuant to the National Capital Revitalization Corporation and Anacostia Waterfront Corporation Reorganization Act of 2008, effective March 26, 2008 (D.C. Law 17-138; 55 DCR 1689).”

Emergency legislation. — For temporary (90 day) amendment of section, see § 2221(a) of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 2221(a) of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 17-176. — Law 17-176, the “Compliance Unit Establishment

Act of 2008”, was introduced in Council and assigned Bill No. 17-503 which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on March 4, 2008, and April 1, 2008, respectively. Signed by the Mayor on April 22, 2008, it was assigned Act No. 17-360 and transmitted to both Houses of Congress for its review. D.C. Law 17-176 became effective on June 13, 2008.

Legislative history of Law 18-111. — Law 18-111, the “Fiscal Year 2010 Budget Support Act of 2009”, was introduced in Council and assigned Bill No. 18-203, which was referred to the Committee on the Whole. The bill was adopted on first and second readings on May 12, 2009, and September 22, 2009, respectively. Signed by the Mayor on December 18, 2009, it was assigned Act No. 18-255 and transmitted to both Houses of Congress for its review. D.C. Law 18-111 became effective on March 3, 2010.

Short title. — Short title: Section 2220 of D.C. Law 18-111 provided that subtitle W of title II of the act may be cited as the “Department of Small and Local Business Development Amendment Act of 2009”.

Editor’s notes. — Section 7100 of D.C. Law 17-219 repealed section 6 of D.C. Law 17-176.

§ 1-301.182. Powers of the Unit.

(a) In analyzing compliance for the relevant projects under the purview of the Office of the Deputy Mayor for Planning and Economic Development, the Unit is authorized to look at:

- (1) All contracts for completed projects;
- (2) All contracts for projects currently being developed;
- (3) All contracts for projects developed after June 13, 2008;
- (4) All relevant statutes and regulations;
- (5) All procurement documents, including requests for proposals, requests for expressions of interest, requests for qualifications, and responses;
- (6) All relevant budget documents;
- (7) All documents related to payment of contractors;
- (8) All staffing schemes and position descriptions related to the project under review; and
- (9) Any other relevant books, accounts, records, reports, findings, and all

other papers, things, or property belonging to or in use by the District government and contractor necessary to analyzing compliance.

(b) To carry out its duties, the Unit is authorized to make site visits and meet with government and private-sector project staff members to evaluate whether each project was completed, or is being completed, in accordance with the documents referenced in subsection (a) of this section.

(c) In reviewing the annual report required by §§ 2-218.50 and 2-218.53, and the annual report, the Unit is authorized to look at any contracts, accounts, records, reports, findings, and all other papers, things, or property belonging to or in use by the District government and contractor.

(June 13, 2008, D.C. Law 17-176, § 3, 55 DCR 5390; Mar. 3, 2010, D.C. Law 18-111, § 2221(b), 57 DCR 181.)

Effect of amendments. — D.C. Law 18-111 added subsec. (c).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2221(b) of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of sec-

tion, see § 2221(b) of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 17-176. — For Law 17-176, see notes following § 1-301.181.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 1-301.181.

§ 1-301.183. Reporting requirements.

(a) The Unit will conduct its audit after the completion of each project, once the project has received a certificate of occupancy. Each project will only be audited one time.

(b) The Unit's reporting requirements that are submitted to the Council after the completion of the project and at the end of each fiscal year shall include an annual written report, including an executive summary, compiling the Unit's findings, which:

(1) Assesses the compliance and enforcement capacity of each District agency required to monitor and enforce requirements set forth in § 1-301.181(b), including the number of employees still needed to meet those requirements;

(2) Evaluates each project identifying relevant compliance requirements, such as which contract, procurement, or legislative mandates were met, or not met, and reasons for under-compliance or noncompliance; and

(3) Makes recommendations addressing problems with under-compliance and noncompliance with a goal of 100% compliance for all relevant contract, procurement, or legislative mandates.

(c) The Unit shall provide written and oral testimony to the Council on the findings for each project discussed in subsection (b) of this section at oversight hearings that are to be scheduled by the Council Chairperson at the request of the Unit.

(d) The Unit shall make public the names of any contractor found to be under-compliant or noncompliant after a correction period to be determined at the discretion of the Unit on a per-project basis.

(e) If the Unit's findings reveal under-compliance or noncompliance on a given project, the Unit is required to report such findings to the relevant

District agency's director and the Council Chairperson. The relevant District agency shall be responsible for enforcing compliance of any violation found.

(f) Annual reports and written testimony from oversight hearings shall be made available to the general public on the Office of the District of Columbia Auditor's website.

(June 13, 2008, D.C. Law 17-176, § 4, 55 DCR 5390.)

Legislative history of Law 17-176. — For Law 17-176, see notes following § 1-301.181.

Editor's notes. — Section 6 of Law 17-176

provided: "This act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan."

§ 1-301.184. Compliance review reporting requirements.

(a) The Unit shall submit to the Council, within 60 days of the end of each quarter, the quarterly reports of each agency required by § 2-218.53 and the quarterly reports of each government corporation required by § 2-218.50(f).

(b) The Unit shall submit to the Council the following:

(1) A summary of the information that each agency is required to submit pursuant to § 2-218.53 and the information that each government corporation is required to submit pursuant to § 2-218.50(f), in a format that shows the cumulative progress of each agency's or government corporation's annual LSDBE contracting and procurement goals to date, and the actual dollar amount expended with each business enterprise for the current fiscal year; and

(2) A list of all agencies and government corporations that have not submitted a report for that quarter with a detailed explanation of what actions were taken by the Department of Small and Local Business Development ("Development") to effectuate compliance with the reporting requirement.

(3) A summary of the information that each contractor is required by the Auditor, in a format as prescribed by the Auditor; and

(4) A list of all contractors that have not submitted a report with a detailed explanation of what actions were taken by the Department to effectuate compliance with the reporting requirement.

(June 13, 2008, D.C. Law 17-176, § 4a, as added Mar. 3, 2010, D.C. Law 18-111, § 2221(c), 57 DCR 181.)

Emergency legislation. — For temporary (90 day) addition, see § 2221(c) of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) addition, see

§ 2221(c) of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 18-111. — For Law 18-111, see notes following § 1-301.181.

Part L

OFFICE OF THE DEPUTY MAYOR FOR PUBLIC SAFETY
AND JUSTICE.**§ 1-301.191. Office of the Deputy Mayor for Public Safety
and Justice; establishment; authority.**

(a) Pursuant to § 1-204.04(b), the Council establishes the Office of the Deputy Mayor for Public Safety and Justice ("Office"), as a separate agency, subordinate to the Mayor, within the executive branch of the District of Columbia government, which shall be headed by the Deputy Mayor for Public Safety and Justice.

(b) Except as provided in subsection (d) of this section, the Deputy Mayor for Public Safety and Justice shall be appointed to head the Office pursuant to § 1-523.01(a).

(c) The Office shall:

(1) Be responsible for providing guidance and support to, and coordination of, public safety and of justice agencies within the District of Columbia government;

(2) Ensure accountability through general oversight over public safety and justice agencies, as well as the programs under the jurisdiction of the Office, including those listed in paragraph (5) of this subsection;

(3) Promote, coordinate, and oversee collaborative efforts among District government agencies, and between District and federal government agencies, to ensure public safety and enhance the delivery of public-safety and justice services;

(4) Serve as a liaison to federal government agencies associated with criminal justice or public-safety issues, in the coordination, planning, and implementation of public-safety and justice matters; and

(5)(A) Oversee and provide administrative support for the:

(i) Access to Justice Initiative;

(ii) Motor Vehicle Theft Prevention Commission;

(iii) Corrections Information Council;

(iv) Office of Justice Grants Administration; and

(v) Office of Victim Services.

(B) Funding for the programs listed in subparagraph (A) of this paragraph shall be specified by the annual Budget Request Act adopted by the Council. Nothing in this paragraph shall prevent the Office from contributing administrative and other support to further the purpose of these programs.

(d) Subsection (b) of this section shall not apply to the Deputy Mayor for Public Safety and Justice who is the incumbent head of the Office on September 14, 2011.

(Sept. 14, 2011, D.C. Law 19-21, § 3022, 58 DCR 6226.)

Legislative history of Law 19-21. — Law 19-21, the “Fiscal Year 2012 Budget Support Act of 2011”, was introduced in Council and assigned Bill No. 19-203, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 25, 2011, and June 14, 2011, respectively. Signed by the Mayor on July 22, 2011, it was

assigned Act No. 19-98 and transmitted to both Houses of Congress for its review. D.C. Law 19-21 became effective on September 14, 2011.

Short title. — Short title: Section 3021 of D.C. Law 19-21 provided that subtitle C of title III of the act may be cited as “Office of the Deputy Mayor for Public Safety and Justice Establishment Act of 2011”.

Subchapter II. Regulatory Authority.

Part A

POLICE REGULATIONS.

§ 1-303.01. Police regulations.

The Council of the District of Columbia is hereby authorized and empowered to make and modify, and the Mayor of the District of Columbia is hereby authorized and empowered to enforce, usual and reasonable police regulations in and for said District as follows:

(1) For causing full inspection to be made, at any reasonable times, of the places where the business of pawnbroking, junk-dealing, or second-hand clothing business may be carried on.

(2) To regulate the storage of highly inflammable substances in the thickly populated portions of the District.

(3) Repealed.

(4) To establish and regulate the charges to be made by owners of hacks and hackney carriages of any kind whatsoever.

(5) To prohibit conducting droves of animals upon such streets and avenues as it may deem needful to public safety and good order.

(6) To regulate the keeping of dogs and fowls.

(7) To prohibit the deposit upon the street or sidewalks of fruit, or any part thereof, or other substance or articles that might litter the same, or cause injury to or impede pedestrians.

(8) To regulate or prohibit loud noises with horns, gongs, or other instruments, or loud cries, upon the streets or public places, and to prohibit the use of any fireworks or explosives within such portions of the District as it may think necessary to public safety.

(9) To prescribe reasonable penalties, including civil penalties, for the infraction of the regulations mentioned in §§ 1-303.01 and 1-303.02. The penalties may be enforced in any court or administrative tribunal of the District of Columbia having jurisdiction of minor offenses or civil infractions, and in the same manner that minor offenses or civil infractions are by law prosecuted or adjudicated and punished.

(Jan. 26, 1887, 24 Stat. 368, ch. 49, § 1; Mar. 3, 1925, 43 Stat. 1125, ch. 443, § 16; Sept. 13, 1961, 75 Stat. 498, Pub. L. 87-227, § 3; Oct. 5, 1985, D.C. Law 6-42, § 483, 32 DCR 4450; Mar. 8, 1991, D.C. Law 8-237, § 27, 38 DCR 314; Oct. 22, 2009, D.C. Law 18-71, § 12(a), 56 DCR 6619.)

Cross references. — Environmental planning commission, see § 3-1001 et seq.

Mayor's authority, supervision of pawnbrokers and other businesses, see § 5-117.02.

Removal of snow and ice, public property, see § 9-602.

Specific licensing provisions, sellers of gasoline, kerosene, oils, fireworks, and explosives, see § 47-2814.

Specific licensing provisions, Council's authority to regulate, modify, or eliminate licensing agreements, see § 47-2842.

Specific licensing provisions, secondhand dealers, see § 47-2837.

Section references. — This section is referred to in §§ 1-303.05, 1-303.02, 1-303.03, 1-303.43, and 48-102.

Prior Codifications. — 1981 Ed., § 1-315. 1973 Ed., § 1-224.

Effect of amendments. — D.C. Law 18-71 repealed par. (3), which had read as follows: "(3) To locate the places where licensed vendors on streets and public places shall stand, and change them as often as the public interests require, and to make all the necessary regulations governing their conduct upon the streets in relation to such business."

Temporary Amendment of Section. — Section 11(a) of D.C. Law 17-172 repealed par. (3).

Section 13(b) of D.C. Law 17-172 provided that the act shall expire after 225 days of its having taken effect.

Section 10(a) of D.C. Law 18-4 repealed par. (3).

Section 12(b) of D.C. Law 18-4 provided that the act shall expire after 225 days of its having taken effect.

Legislative history of Law 6-42. — Law 6-42 was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-237. — Law 8-237 was introduced in Council and assigned Bill No. 8-203, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-320 and transmitted to both Houses of Congress for its review.

Legislative history of Law 18-71. — Law 18-71, the "Vending Regulation Act of 2009", as introduced in Council and assigned Bill No. 18-257, which was referred to the Committee on Public Services and Consumer Affairs. The bill was adopted on first and second readings on June 30, 2009, and July 14, 2009, respectively. Signed by the Mayor on July 28, 2009, it was assigned Act No. 18-167 and transmitted to both Houses of Congress for its review. D.C. Law 18-71 became effective on October 22, 2009.

New implementing regulations. — Pursuant to this section, the following new regulations were adopted in 1978: The "District of Columbia Noise Control Act of 1977" (D.C. Law 2-53, Mar. 16, 1978, 24 DCR 5293) (as amended by D.C. Law 9-135, July 23, 1992, 39 DCR 4079) and the "Vendors Regulation Amendments Act of 1978" (D.C. Law 2-82, June 30, 1978, 24 DCR 9293).

Pursuant to this section, the following new regulations were adopted in 1979: The "District of Columbia Noise Control Amendments Act of 1979" (D.C. Law 3-17, Sept. 28, 1979, 26 DCR 229).

Pursuant to this section, the following new regulations were adopted in 1982: The "Taxicab Act of 1981" (D.C. Law 4-89, Mar. 31, 1982, 29 DCR 661).

Pursuant to this section, the following new regulations were adopted in 1982: The "Vendors Regulation Amendment Act of 1982" (D.C. Law 4-195, Mar. 10, 1983, 30 DCR 55).

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(1) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Delegation of powers.
Validity of prohibition of trade or business.
Vendors.

Delegation of powers.

Notwithstanding Const. art. 1, § 8, gives the exclusive right to legislate for the District of Columbia to Congress, Congress had the power to vest the municipalities in the District and the District itself with authority to legislate, as it has done in the past. *Crane v. District of Columbia*, 289 F. 557, 1923 U.S. App. LEXIS 2000 (1923).

Validity of prohibition of trade or business.

Prohibition against vending permit for bootblack stand on public place violated equal protection; no rational basis existed for distinguishing bootblack stand from other types of vendors; and there was no way of defining purpose of commissioners that adopted prohibition. U.S. Const. Amends. 5, 14. *Brown v. Barry*, 710 F. Supp. 352, 1989 U.S. Dist. LEXIS 2709 (1989).

Vendors.

Regulations establishing stands for street vendors held valid. *Carranzo v. District of Columbia*, 10 F.2d 983, 1926 U.S. App. LEXIS 2275 (1926).

The prohibition of the use of open spaces, public grounds, and streets for private purposes by Act May 17, 1848, § 13 (9 Stat. 229), by Act April 6, 1870 (16 Stat. 82) and by an ordinance adopted in 1856, applied only to

permanent obstructions or occupancy of the public places of streets, and did not prohibit the temporary use thereof. *Crane v. District of Columbia*, 289 F. 557, 1923 U.S. App. LEXIS 2000 (1923).

Act Jan. 26, 1887 (24 Stat. 368) authorizing the commissioners of the District of Columbia to make reasonable police regulations to locate places where licensed vendors shall stand, and governing their conduct upon the streets in relation to such business, did not empower the commissioners to prohibit street sales by either licensed or unlicensed vendors. *Crane v. District of Columbia*, 289 F. 557, 1923 U.S. App. LEXIS 2000 (1923).

Joint Resolution Feb. 26, 1892 (D.C. Code 1929, T. 20, § 34) limiting the power of the commissioners of the District of Columbia to such reasonable and usual police regulations as they may deem necessary for the protection of the lives, limb, health, comfort, and quiet of persons within the District, did not empower the commissioners to make a regulation prohibiting sales of articles by vendors on streets and public places, unless the articles themselves would endanger, disturb, annoy, or incommode the public. *Crane v. District of Columbia*, 289 F. 557, 1923 U.S. App. LEXIS 2000 (1923).

Regulatory prohibition on vending in an entrance zone provided for both civil and criminal sanctions. D.C. Code 1981, §§ 1-315(9), 1-316; D.C. Mun. Regs. title 24, § 510.21. *Karriem v. District of Columbia*, 717 A.2d 317, 1998 D.C. App. LEXIS 152 (1998), writ of certiorari denied by 526 U.S. 1147, 119 S. Ct. 2025, 143 L. Ed. 2d 1036, 1999 U.S. LEXIS 3722, 67 U.S.L.W. 3732 (1999).

§ 1-303.02. Publication of regulations; effective date.

The regulations provided for in § 1-303.01 and adopted prior to October 21, 1968, shall be printed in 1 or more of the daily newspapers published in the District of Columbia; and no penalty prescribed for the violation of said regulations shall be enforced until 30 days after such publication.

(Jan. 26, 1887, 24 Stat. 369, ch. 49, § 2; Aug. 2, 1983, D.C. Law 5-24, § 19, 30 DCR 3341; Mar. 14, 1985, D.C. Law 5-159, § 26, 32 DCR 30.)

Cross references. — Publication of laws and ordinances, see § 5-103.01.

Section references. — This section is referred to in §§ 1-303.01, 1-303.03, and 1-30

Prior Codifications. — 1981 Ed., § 1-318. 1973 Ed., § 1-225.

Legislative history of Law 5-24. — Law 5-24 was introduced in Council and assigned Bill No. 5-169, which was referred to the Committee of the Whole. The Bill was adopted on

first and second readings on May 10, 1983, and May 24, 1983, respectively. Signed by the Mayor on June 9, 1983, it was assigned Act No. 5-41 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-159. — Law 5-159 was introduced in Council and assigned Bill No. 5-540, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 20,

1984, and December 4, 1984, respectively. Signed by the Mayor on December 10, 1984, it

was assigned Act No. 5-224 and transmitted to both Houses of Congress for its review.

§ 1-303.03. Regulations for protection of life, health, and property.

The Council of the District of Columbia is hereby authorized and empowered to make, and the Mayor of the District of Columbia is hereby authorized and empowered to enforce, all such reasonable and usual police regulations in addition to those already made under §§ 1-303.01 and 1-303.02, as the Council may deem necessary for the protection of lives, limbs, health, comfort, and quiet of all persons and the protection of all property within the District of Columbia.

(Feb. 26, 1892, 27 Stat. 394, Res. No. 4, § 2.)

Cross references. — Alcoholic beverage control, regulations for administration and enforcement, see §§ 25-201 and 25-211.

Boxing, rules governing, see § 3-606.

Businesses, rules and regulations for licensing, inspection, or regulation, see § 47-2844.

Department of human services, rules governing, see §§ 7-174 through 7-177.

Discharge of parolees, regulations governing, see § 24-404.

Electricity, regulation of production, use, and control, see § 2-131.

Federal government restaurants, regulations governing, see § 7-2701.

Fire escapes and building safety, rules governing, see § 6-701.04.

Firemen, rules governing, see §§ 5-402, 5-406 and 5-411.

Food and drugs, regulations to prevent adulteration, see § 48-104.

Garbage and other refuse, rules governing collection, see §§ 8-701 and 8-707.

Harbor regulations, see § 22-4401.

Human excreta and waste, rules governing disposal, see § 8-603.

Insurance and insurance companies, regulations governing, see § 31-202.

Lighting of streets and bridges, regulations, see §§ 9-301 and 9-507.

Mattresses, regulations governing manufacture, renovation, and sale, see §§ 8-503 and 8-506.

Medical and dental colleges, regulations for granting licenses and permits to operate, see § 38-1402.

Metropolitan police department, rules governing, see §§ 5-105.05, 5-127.01, 5-133.06, 5-111.01, 5-111.03 5-115.02, and 5-115.05.

Money lenders, rules and regulations governing, see § 26-911.

Motor vehicles, general regulations, see § 50-2201.03.

Motor vehicles, regulations governing registration, see § 50-1501.02.

Municipal fish wharves and markets, regulations governing, see § 37-205.01.

Municipal playgrounds and parks, regulations governing, see §§ 10-127 and 10-137.

Parking, rules governing, see § 6-405.

Plumbing and drainage, regulations, see § 2-135.

Prison labor, regulations governing, see § 24-201.12.

Produce markets, regulations governing, see § 37-201.28.

Public beach and dressing houses, regulations governing, see § 10-162.

Public convenience stations, regulations governing, see § 10-134.

Public utilities, regulations governing, see § 34-809.

Reagan national airport, regulations for administration, see § 9-702.

Repair of streets, alleys and sewers, regulations governing, see § 9-101.01.

Retirement of public school teachers, regulations governing, see § 38-2001.16.

Steam and pressure boilers, regulations, see §§ 2-115 and 2-118.

Taxation, authority to make rules and regulations, see § 47-3407.

Weights and measures, establishment of tolerances and specifications, see §§ 37-201.16a and 37-201.25.

Weights and measures, wood sales, standards, see § 37-201.17.

Zoning regulations, see § 6-641.01.

Section references. — This section is referred to in §§ 1-303.05 and 1-303.43.

Prior Codifications. — 1981 Ed., § 1-319. 1973 Ed., § 1-226.

New implementing regulations. — New implementing regulations: Pursuant to this section, the following new regulations were adopted in 1978: The "Elimination of the Chest X-Ray Requirement Act of 1977" (D.C. Law 2-39, Feb. 2, 1978, 24 DCR 3175); the "Water

Quality Standard Approval Act of 1977" (D.C. Law 2-68, Apr. 6, 1978, 24 DCR 6809); the "Fire Lanes and Fire Hydrants Act of 1977" (D.C. Law 2-90, June 30, 1978, 24 DCR 9759); the "Amended Eligibility Requirements for AFDC by Reason of the Employment of the Father Act of 1978" (D.C. Law 2-97, Aug. 12, 1978, 25 DCR 392); the "District of Columbia Child Development Facilities Regulation Amendment Act of 1978" (D.C. Law 2-98, Aug. 17, 1978, 25 DCR 245); the "Fire Safety Act of 1978" (D.C. Law 2-99, Aug. 17, 1978, 25 DCR 252); and the "Standards of Assistance Relating to Persons Residing in Community Residence Facilities Act of 1978" (D.C. Law 2-108, Sept. 22, 1978, 25 DCR 1453).

Pursuant to this section, the following new regulations were adopted in 1979: The "Air Quality Control Regulations Amendment No. 3 of 1978" (D.C. Law 2-133, Mar. 3, 1979, 25 DCR 3490); the "District of Columbia Mental Health Information Act of 1978" (D.C. Law 2-136, Mar. 3, 1979, 25 DCR 5055); the "Air Quality Amendment Act No. II of 1978" (D.C. Law 2-151, Mar. 6, 1979, 25 DCR 2532); and the "Community Residence Facilities Licensure Act Amendments of 1979" (D.C. Law 3-27, Oct. 18, 1979, 26 DCR 667).

Pursuant to this section, the following new regulations were adopted in 1981: The "Second-hand Dealers Regulation and Rental Housing Act of 1980 Clarification Act of 1981" (D.C. Law 4-15, July 14, 1981, 28 DCR 2255).

Pursuant to this section, the following new regulations were adopted in 1981: The "Intermediate Paramedic Regulations Act of 1981" (D.C. Law 4-25, Aug. 1, 1981, 28 DCR 2622).

Pursuant to this section, the following new regulations were adopted in 1982: The "Enclosed Sidewalk Cafe Act of 1982" (D.C. Law 4-148, Sept. 17, 1982, 29 DCR 3361).

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(4) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Breach of peace.
Building code regulations.
Congressional authority.
Construction and application.
Curfew.
Dangerous devices or substances.
Delegation of authority.
Disorderly conduct.
Fines.
Firearms.
Gambling.
Health care.
Hospitals.
Human rights, generally.
Innkeepers.
Insurance.
Interstate commerce.
Junkshops or pawnbrokers.
Licenses for occupations and privileges.
Motor vehicles.
Police lines.
Police power, generally.
Police radar.
Public health.

Public places.
Standing.
Traffic regulations.
Vendors.
Waste disposal.

Breach of peace.

Restrictions on time and place of demonstrations and conduct of demonstrators must not be used as a subterfuge for the suffocation of speech; the police may, in conformance with the First Amendment, impose reasonable restraints on demonstrations to assure that they be peaceful and not obstructive. *U.S. Const. Amend. 1. Washington Mobilization Committee v. Cullinane*, 566 F.2d 107, 1977 U.S. App. LEXIS 13879 (C.A.D.C. 1977).

First Amendment permits the police to contain or disperse demonstrations that have become violent or obstructive. *U.S. Const. Amend. 1. Washington Mobilization Committee v. Cullinane*, 566 F.2d 107, 1977 U.S. App. LEXIS 13879 (C.A.D.C. 1977).

In analyzing constitutional propriety of police reaction to seven demonstrations protesting United States participation in Vietnam war

an important factor was that the police did not interfere with the demonstrators because of the content of the message they sought to present; furthermore, since either obstructive conduct or actual or imminent violence infected the demonstrations in substantial measure, the First Amendment did not insulate them from restraint by way of police lines and sweeps and application of District of Columbia failure-to-move-on statute. D.C. Code § 22-1121(2); U.S. Const. Amend. 1. *Washington Mobilization Committee v. Cullinane*, 566 F.2d 107, 1977 U.S. App. LEXIS 13879 (C.A.D.C. 1977).

When government seeks to regulate activity which combines constitutionally protected speech with other forms of conduct the incidental restriction on First Amendment freedoms must be no greater than is essential to further a legitimate government interest; it is the tenor of a demonstration as a whole that determines whether the police may intervene and if it is substantially infected with violence or destruction the police may act to control it as a unit; confronted with a mob, the police cannot be expected to single out individuals but may deal with the crowd as a unit. D.C. Code § 22-1121(2); U.S. Const. Amend. 1. *Washington Mobilization Committee v. Cullinane*, 566 F.2d 107, 1977 U.S. App. LEXIS 13879 (C.A.D.C. 1977).

Although one who has violated no law is not to be arrested for the offenses of those who have been violent or obstructive, the police may validly order violent or obstructive demonstrators to disperse or clear the streets and if any demonstrator or bystander refuses to obey such an order after fair notice and opportunity to comply, his arrest does not violate the Constitution even though he has not previously been violent or obstructive; nonviolent demonstrators may be properly arrested for failure to obey a valid dispersal order. D.C. Code § 22-1121(2); U.S. Const. Amend. 1. *Washington Mobilization Committee v. Cullinane*, 566 F.2d 107, 1977 U.S. App. LEXIS 13879 (C.A.D.C. 1977).

It was error to order District of Columbia police officials to formulate a comprehensive manual of policies to be followed in dealing with mass demonstrations absent showing that police officials directed, authorized or approved use of excessive force, any showing that it was department policy to detain prisoners an unreasonable time or deny them adequate medical treatment or that delay in booking was due to anything other than a great number of arrests in prior demonstrations, notwithstanding that in individual cases mistakes may have been made. *Washington Mobilization Committee v. Cullinane*, 566 F.2d 107, 1977 U.S. App. LEXIS 13879 (C.A.D.C. 1977).

In correcting any improprieties in District of Columbia practices and policies of handling mass demonstrations the district court was to

avoid any undue limitations on the police department's latitude in dispatch of its own internal affairs. *Washington Mobilization Committee v. Cullinane*, 566 F.2d 107, 1977 U.S. App. LEXIS 13879 (C.A.D.C. 1977).

Conduct creating a substantial risk of violence amounts to a breach of the peace under District of Columbia Code making it a misdemeanor for any one, with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby, to congregate with others on a public street and to refuse to move on when ordered by the police. D.C. Code § 22-1121(2). *Washington Mobilization Committee v. Cullinane*, 566 F.2d 107, 1977 U.S. App. LEXIS 13879 (C.A.D.C. 1977).

Acts and conduct of demonstrators in obstructing streets and highways may amount to a nuisance and, therefore, constitute breach of the peace within meaning of District of Columbia failure-to-move-on statute; just as language may amount to a nuisance so may conduct of people blocking traffic at a critical intersection breach the peace as fully as those who hurl stones. D.C. Code § 22-1121(2). *Washington Mobilization Committee v. Cullinane*, 566 F.2d 107, 1977 U.S. App. LEXIS 13879 (C.A.D.C. 1977).

The police have a duty to keep streets and sidewalks open for the movement of traffic; hence, failure-to-move-on provision of District of Columbia breach of the peace statute is a reasonable regulation empowering the police to fulfill such duty; statute does no more than that but in applying it the police must direct and control demonstrators only to the extent sufficient to protect legitimate state interests, such as free circulation of traffic and free access to public buildings; in ordering obstructive demonstrators to "move on" the initial police objective must be merely to clear passage, not to disperse demonstrators or suppress the free communication of their views. D.C. Code § 22-1121(2); U.S. Const. Amend. 1. *Washington Mobilization Committee v. Cullinane*, 566 F.2d 107, 1977 U.S. App. LEXIS 13879 (C.A.D.C. 1977).

Building code regulations.

Authority of Commissioners of District of Columbia to promulgate building code provisions relating to fire regulations which had to be complied with before new occupancy permits for rooming houses would be issued could not be found in congressional grant of authority to issue either police regulations or building regulations, but was discoverable in grant of authority to promulgate regulations "for protection against fire." D.C. Code 1961, §§ 1-226, 1-228, 5-317. *Jones v. District of Columbia*, 212 F.Supp. 438, 1962 U.S. Dist. LEXIS 4749 (D.D.C.1962).

Housing code, as applied in case in which application for renewal of license to operate apartment house was denied by the business licenses and permits division of the Department of Economic Development, was not void for vagueness where petitioner did not dispute the building inspector's findings as to the existence of housing code violations or contend that they were the result of his failure to understand regulations. D.C. Code §§ 1-226, 1-228, 47-2328, 47-2345. *Holmes v. District of Columbia Board of Appeals & Review*, 351 A.2d 518, 1976 D.C. App. LEXIS 466 (1976).

Congressional authority.

If Congress chose, it could govern District of Columbia directly, without help of municipal government or its agencies. *District of Columbia v. Owens-Corning Fiberglas Corp.*, 572 A.2d 394, 1989 D.C. App. LEXIS 164 (1989), writ of certiorari denied by 498 U.S. 880, 111 S. Ct. 213, 112 L. Ed. 2d 173, 1990 U.S. LEXIS 4857, 59 U.S.L.W. 3250 (1990).

Construction and application.

Under statute authorizing commissioners of District of Columbia to make and enforce all such reasonable and usual police regulations as they may deem necessary for protection of lives, limbs, health, comfort and quiet of all persons and protection of all property within district, legislative authority of commissioners is limited to enactment of reasonable and usual police regulations. D.C. Code § 1-226. *Newsweek Magazine v. District of Columbia Com. on Human Rights*, 376 A.2d 777, 1977 D.C. App. LEXIS 444 (1977).

Curfew.

Curfew barring all persons from streets of District of Columbia from 5:30 p. m. to 6:30 a. m. the next day, except police, firemen, medical personnel and district sanitary engineers was not an unreasonable abridgement of defendant's constitutional rights of free travel, speech and assembly where city had suddenly become rampant with rioting, looting and burning, federal troops were entering the city to combat the widespread disturbances, and citizens were suffering material discomfort. D.C. Code § 1-226. *Glover v. District of Columbia*, 250 A.2d 556, 1969 D.C. App. LEXIS 210 (App. 1969).

Defendant's arrest for violation of curfew was not invalid for lack of notice of imposition of curfew where he was arrested more than three hours after curfew had been announced and record did not suggest that he did not know and could not have known of curfew. D.C. Code § 1-226. *Glover v. District of Columbia*, 250 A.2d 556, 1969 D.C. App. LEXIS 210 (App. 1969).

Imposition of \$12 fine upon defendant for violation of curfew was within discretion of

sentencing court under regulation permitting maximum penalty of a \$300 fine. D.C. Code § 1-226. *Glover v. District of Columbia*, 250 A.2d 556, 1969 D.C. App. LEXIS 210 (App. 1969).

Curfew imposed upon District of Columbia was not void for failure to state which of several possible penalty provisions would be basis of punishment for violation and for leaving to courts the task of fixing the penalty in each case where curfew was a police regulation and police regulations provided that violation of a regulation wherein penalty was not specifically provided would be punished by fine of not more than \$300. D.C. Code § 1-226. *Glover v. District of Columbia*, 250 A.2d 556, 1969 D.C. App. LEXIS 210 (App. 1969).

Commissioner of District of Columbia had statutory authority to promulgate curfew from 5:30 p.m. to 6:30 the next morning, barring all persons from streets of District of Columbia except police, firemen, medical personnel and district sanitary engineers, without express enabling legislation by Congress where city suddenly became rampant with rioting, looting and burning and federal troops were entering the city to combat the disturbances, which were producing material discomfort to the citizens. D.C. Code § 1-226. *Glover v. District of Columbia*, 250 A.2d 556, 1969 D.C. App. LEXIS 210 (App. 1969).

Curfew barring all persons from streets of District of Columbia except police, firemen, medical personnel and district sanitary engineers from 5:30 p.m. to 6:30 the next morning was a reasonable police regulation where Commissioner had determined that an emergency situation existed and that the curfew was necessary to protect persons and property, and federal troops were entering the city to combat sudden and rampant rioting, looting and burning, which were producing material discomfort to the citizens. D.C. Code § 1-226. *Glover v. District of Columbia*, 250 A.2d 556, 1969 D.C. App. LEXIS 210 (App. 1969).

In view of fact that the curfew had become a usual device employed by municipalities to quell riots, curfew imposed on District of Columbia from 5:30 p.m. to 6:30 the next morning, barring all persons from the streets except police, firemen, medical personnel and district sanitary engineers, was a usual police regulation within scope of statute authorizing District Commissioner to make reasonable and usual police regulations. D.C. Code § 1-226. *Glover v. District of Columbia*, 250 A.2d 556, 1969 D.C. App. LEXIS 210 (App. 1969).

Dangerous devices or substances.

Mere possession of dangerous or deleterious devices or products may be forbidden by state under its police powers. *Smith v. District of*

Columbia, 436 A.2d 53, 1981 D.C. App. LEXIS 375 (1981).

Delegation of authority.

Congress in legislating for District of Columbia has all the powers of a state legislature and may delegate to district government that full legislative power subject to constitutional limitations to which all lawmaking is subservient and subject to the power of Congress at any time to revise, alter, or revoke authority granted. U.S. Const. art. 1, § 8, cl. 17; D.C. Code § 1-226. *Firemen's Ins. Co. v. Washington*, 483 F.2d 1323, 1973 U.S. App. LEXIS 8554 (C.A.D.C. 1973).

Notwithstanding Const. art. 1, § 8, gives the exclusive right to legislate for the District of Columbia to Congress, Congress had the power to vest the municipalities in the District and the District itself with authority to legislate, as it has done in the past. *Crane v. District of Columbia*, 289 F. 557, 1923 U.S. App. LEXIS 2000 (1923).

Disorderly conduct.

In determining whether commissioner's order prohibiting disorderly conduct within building owned or under control of District of Columbia is constitutional, court must balance legitimate governmental interests of safeguarding rights of others and protecting principle of order against incidentally affected First Amendment rights. U.S. Const. Amend. 1. *District of Columbia v. Gueory*, 376 A.2d 834, 1977 D.C. App. LEXIS 360 (1977).

Commissioner's order which provides that no person shall wilfully and knowingly utter loud, threatening or abusive language or engage in disorderly conduct within any building owned or under the control of the District of Columbia with the intent to disrupt orderly conduct of government meeting or business is not overbroad and vague and thus is not violative of the First Amendment. U.S. Const. Amend. 1. *District of Columbia v. Gueory*, 376 A.2d 834, 1977 D.C. App. LEXIS 360 (1977).

Commissioner's order which prohibits disorderly conduct within any building owned or under control of District of Columbia with intent to impede government business does not prohibit open expression of viewpoints. *District of Columbia v. Gueory*, 376 A.2d 834, 1977 D.C. App. LEXIS 360 (1977).

Commissioner's order which provides that no person shall wilfully and knowingly utter loud, threatening or abusive language or engage in any disorderly conduct within any building owned or under control of District of Columbia with intent to impede, disrupt or disturb orderly conduct of government meeting or official business should be interpreted as prohibiting actual or imminent interference with peaceful conduct of governmental business. *District of*

Columbia v. Gueory, 376 A.2d 834, 1977 D.C. App. LEXIS 360 (1977).

Fines.

Existence of two different schedules of civil fines in District of Columbia, for failure of commercial property owner to properly containerize solid waste, did not violate apartment building owner's due process right to notice of the fines owner could be subject to. *Gary Inv. Corp. v. District of Columbia Dep't of Health*, 896 A.2d 193, 2006 D.C. App. LEXIS 145 (2006).

Firearms.

Enactment of gun control law for the District of Columbia in 1932 did not foreclose further exercise of power granted District by 1906 Act authorizing council to make and enforce all regulations deemed necessary for regulation of firearms in absence of expression in 1932 Act of intent to preempt the entire field and in view of demonstrated design of the regulations to leave areas preempted by the statute unaffected. D.C. Code §§ 1-224, 1-224, subd. 3, 1-227; Joint Resolution Feb. 20, 1897, 29 Stat. 702. *Maryland & District of Columbia Rifle & Pistol Asso. v. Washington*, 442 F.2d 123, 1971 U.S. App. LEXIS 11707 (C.A.D.C. 1971).

It is well within police power of District of Columbia to declare as contraband machine guns, sawed-off shotguns, blackjacks and switchblades without offending commerce clause. D.C. Code 1973, §§ 22-3204, 22-3214; D.C. Code 1978 Supp., § 6-1812(d, e); U.S. Const. Art. 1, § 8, cl. 3. *Smith v. District of Columbia*, 436 A.2d 53, 1981 D.C. App. LEXIS 375 (1981).

Phrase "brought into the district," within provision of Firearms Control Regulations Act of 1975 stating that firearms brought into District of Columbia must be immediately registered, does not refer to firearms packaged in their original shipping containers that are being transported in interstate commerce in a bona fide shipment; as so construed, the provision does not impose an unconstitutional burden on interstate commerce. D.C. Code § 6-1816(a). *McIntosh v. Washington*, 395 A.2d 744, 1978 D.C. App. LEXIS 365 (1978).

Firearms Control Regulations Act of 1975 is not unconstitutionally vague. *McIntosh v. Washington*, 395 A.2d 744, 1978 D.C. App. LEXIS 365 (1978).

Firearms Control Regulations Act of 1975 is not antithetical to Administrative Procedure Act. D.C. Code §§ 1-1509, 6-1801 et seq., 6-1820(b), 6-1846(b), 6-1879. *McIntosh v. Washington*, 395 A.2d 744, 1978 D.C. App. LEXIS 365 (1978).

Firearms Control Regulations Act of 1975 would not prohibit company from selling handguns to qualified residents, but such sales

would be subject to District of Columbia Council's authority to regulate conduct of dealers in dangerous or deadly weapons. D.C. Code §§ 6-1811(a), (a)(1), 6-1852, 47-2340. *McIntosh v. Washington*, 395 A.2d 744, 1978 D.C. App. LEXIS 365 (1978).

Provisions within Firearms Control Regulations Act of 1975 would allow detective agency to furnish properly registered firearms to special police officers during duty hours and would allow commissioned special police officers of an organization, which arm such employees with firearms during such employees' duty hours, to maintain their firearms in a loaded usable condition during duty hours. D.C. Code §§ 6-1811(a), (a)(1). *McIntosh v. Washington*, 395 A.2d 744, 1978 D.C. App. LEXIS 365 (1978).

Firearms Control Regulations Act of 1975, in imposing criminal penalties on those who fail to register firearms regardless of their knowledge of the duty to register, does not deny due process. D.C. Code § 6-1876; U.S. Const. Amend. 14. *McIntosh v. Washington*, 395 A.2d 744, 1978 D.C. App. LEXIS 365 (1978).

Home Rule Act's provision vesting legislative power in District of Columbia Council afforded Council authority to enact Firearms Control Regulations Act of 1975, notwithstanding Home Rule Act provision that Council was to have no authority to enact any act with respect to any provision of title of District of Columbia Code relating to criminal procedure or with respect to any provision of titles relating to crimes and treatment of prisoners during 24 months after members of Council first elected pursuant to such Act were to take office. D.C. Code §§ 1-144(a), 1-147(a)(9), 6-1801 et seq., 22-101 et seq., 23-101 et seq., 24-103 et seq. *McIntosh v. Washington*, 395 A.2d 744, 1978 D.C. App. LEXIS 365 (1978).

Gambling.

District of Columbia police regulation prohibiting gambling on vacant or unoccupied property where conduct can be seen or heard from public highway was not rendered ineffective by failure to, as required by Administrative Procedure Act, meet original July 1st deadline for publication in the District of Columbia Municipal Regulations, although regulations were not published by that deadline where the deadline had been extended before the instant challengers of regulation were arrested. D.C. Code 1981, §§ 1-319, 1-1538(a). *Green v. District of Columbia*, 710 F.2d 876, 1983 U.S. App. LEXIS 26335 (C.A.D.C. 1983).

Congress authorized the District of Columbia council to make and enforce police regulation prohibiting gambling on vacant or unoccupied property where conduct can be seen or heard from public highway. D.C. Code 1981, §§ 1-319, 1-1538(a). *Green v. District of Columbia*, 710

F.2d 876, 1983 U.S. App. LEXIS 26335 (C.A.D.C. 1983).

Health care.

While judgment of Court of Appeals may be informed by sensitivity to plight of the poor, Court of Appeals cannot reorder District of Columbia's fiscal priorities to provide better health care for its citizens since Court lacks expertise to duplicate District's labors in trying to stretch insufficient budget to meet all its needs. *Spivey v. Barry*, 665 F.2d 1222, 1981 U.S. App. LEXIS 17915 (C.A.D.C. 1981).

Hospitals.

Whatever rights District of Columbia residents have under District of Columbia Clinical Health Services Act, those rights do not include entitlement to receive their treatments at specified location, and, therefore, Act could not be used as basis for injunction ordering reopening of public health clinic which had been closed by District officials. D.C. Code 1978 Supp. § 32-322. *Spivey v. Barry*, 665 F.2d 1222, 1981 U.S. App. LEXIS 17915 (C.A.D.C. 1981).

Human rights, generally.

Findings of facts of Commission on Human Rights in employment discrimination case were incomplete and were not supported by substantial evidence; thus Commission's ruling that employer had been guilty of racial discrimination in termination of complainant's employment was arbitrary and capricious, an abuse of discretion and not in accordance with law. D.C. Code §§ 1-226, 1-1509(e). *Newsweek Magazine v. District of Columbia Com. on Human Rights*, 376 A.2d 777, 1977 D.C. App. LEXIS 444 (1977).

Police regulation authorizing Commission on Human Rights to make recommendations for correction of illegal employment practice when violation is established, with notice that if practice is not corrected within 15 days, matter will be referred to corporation counsel for enforcement did not authorize Commission's decision ordering employer to implement affirmative action program and to make monthly reports to human rights office. D.C. Code§ 1-226. *Newsweek Magazine v. District of Columbia Com. on Human Rights*, 376 A.2d 777, 1977 D.C. App. LEXIS 444 (1977).

Human rights law enacted as police regulation pursuant to District of Columbia code does not apply retroactively and could not be used retroactively to uphold award by Commission on Human Rights of damages and attorneys fees. D.C. Code§ 1-226. *Newsweek Magazine v. District of Columbia Com. on Human Rights*, 376 A.2d 777, 1977 D.C. App. LEXIS 444 (1977).

Human rights law enacted as police regulation was a valid exercise of police power. D.C. Code § 1-226. *Newsweek Magazine v. District*

of Columbia Com. on Human Rights, 376 A.2d 777, 1977 D.C. App. LEXIS 444 (1977).

Police regulation authorizing Commission on Human Rights to make recommendations for correction of illegal employment practice with notice that, if practice is not corrected within 15 days of service of conclusion and recommendations, matter will be referred to corporation counsel for enforcement does not authorize award of damages and counsel fees. D.C. Code § 1-226. *Newsweek Magazine v. District of Columbia Com. on Human Rights*, 376 A.2d 777, 1977 D.C. App. LEXIS 444 (1977).

Harmful effects of illegal discrimination in employment are so deleterious to our society as to affect "lives, limbs, health, comfort and quiet of all persons" within district; thus they are within purview of statute authorizing commissioners to make and enforce all such reasonable and usual regulations as they may deem necessary for protection of lives, limbs, health, comfort and quiet of all persons within district and prohibition by commissioners of racial discrimination in employment was a "reasonable and usual regulation" within the statute. D.C. Code § 1-226. *Newsweek Magazine v. District of Columbia Com. on Human Rights*, 376 A.2d 777, 1977 D.C. App. LEXIS 444 (1977).

Portion of order of the Commission on Human Rights which awarded to black complainant, who had been denied an apartment because of her race, damages in the amount of \$950 as compensation for humiliation and mental anguish and for out-of-pocket expenses was unauthorized by regulation authorizing the Commission "to take such affirmative action as will effectuate the purposes of this Article," despite contention that the monetary award was mere incidental relief. D.C. Code §§ 1-224, 1-224a, 1-226. *Mendota Apartments v. District of Columbia Com. on Human Rights*, 315 A.2d 832, 1974 D.C. App. LEXIS 379 (1974).

Innkeepers.

A regulation of the commissioners of the District of Columbia defining a rooming house for licensing purposes as a building occupied for a consideration by more than four persons who are not members of owner's immediate family was valid, notwithstanding statute relating to fire escapes and safety provisions defined a rooming house as a building in which rooms are rented and sleeping quarters are provided to accommodate 10 or more persons. D.C. Code 1940, §§ 1-226, 5-312(b), 11-772(a), 45-1601 et seq., 45-1607(b), 47-2301 et seq., 47-2344, 47-2345. *Savage v. District of Columbia*, 54 A.2d 562, 1947 D.C. App. LEXIS 153 (Cr.App. 1947).

Insurance.

Regulation prohibiting auto, fire or casualty insurer from considering geographical location in determining whether to insure or continue to

insure a risk in the District of Columbia except in cases of overconcentration of liability in a single high risk area and regulation prohibiting cancellation of auto, fire and casualty policies only for specified reasons are within the police power accorded to the District of Columbia by congressional enactment. D.C. Code § 1-226. *Firemen's Ins. Co. v. Washington*, 483 F.2d 1323, 1973 U.S. App. LEXIS 8554 (C.A.D.C. 1973).

District of Columbia regulation generally precluding the insurance company from considering geographic location in determining whether to insure or continue to insure auto, fire and casualty risks in district and prohibiting cancellation of those policies for other than specified conditions do not conflict with specific provisions of the District of Columbia Insurance Code or the Automobile Insurance Plan and were not preempted thereby; with respect to basic property insurance regulation prohibiting geographic discrimination did conflict with and was preempted by the District of Columbia Insurance Placement Act. D.C. Code §§ 1-226, 35-1503(c), 35-1505, 35-1505(d), 35-1701 et seq.; National Housing Act, § 1201, 12 U.S.C. § 1749bbb. *Firemen's Ins. Co. v. Washington*, 483 F.2d 1323, 1973 U.S. App. LEXIS 8554 (C.A.D.C. 1973).

District of Columbia city council did not have authority under either its police power or the Insurance Code to pass insurance regulations designed to prohibit geographic discrimination and arbitrary cancellation of policies within the District. Reorganization Plan No. 3 of 1967, §§ 402(4), 406, D.C. Code Tit. 1, Appendix I; D.C. Code §§ 1-226, 35-102, 35-1701 to 35-1711. *Firemen's Ins. Co. v. Washington*, 333 F. Supp. 951, 1971 U.S. Dist. LEXIS 11190 (1971), affirmed in part and reversed in part by 483 F.2d 1323, 157 U.S. App. D.C. 320, 1973 U.S. App. LEXIS 8554 (1973).

Regulation of insurance is not a "usual" or valid exercise of police power by municipality, nor is it the "usual" exercise of that power by the municipal government of the District of Columbia. D.C. Code § 1-226. *Firemen's Ins. Co. v. Washington*, 333 F. Supp. 951, 1971 U.S. Dist. LEXIS 11190 (1971), affirmed in part and reversed in part by 483 F.2d 1323, 157 U.S. App. D.C. 320, 1973 U.S. App. LEXIS 8554 (1973).

Interstate commerce.

State may regulate matters of local concern, absent conflicting legislation by Congress, even where such regulation imposes burden on interstate commerce; extent of permissible burden depends on benefit of regulation to state measured against its impact on interstate commerce. U.S. Const. Art. 1, § 8, cl. 3. *Smith v. District of Columbia*, 436 A.2d 53, 1981 D.C. App. LEXIS 375 (1981).

Although not a state, District of Columbia may not propound legislation that unduly burdens interstate commerce. U.S. Const.Art. 1, § 8, cl. 3. *Smith v. District of Columbia*, 436 A.2d 53, 1981 D.C. App. LEXIS 375 (1981).

Transportation of motor vehicles across state lines, whether for commercial purposes or for personal convenience and pleasure, is clearly a matter in interstate commerce. U.S. Const.Art. 1, § 8, cl. 3. *Smith v. District of Columbia*, 436 A.2d 53, 1981 D.C. App. LEXIS 375 (1981).

Police regulation prohibiting possession of police radar detector in motor vehicle did not violate commerce clause. U.S. Const.Art. 1, § 8, cl. 3. *Smith v. District of Columbia*, 436 A.2d 53, 1981 D.C. App. LEXIS 375 (1981).

Power of state to regulate matters of interstate commerce is never greater than in area of highway safety. U.S. Const.Art. 1, § 8, cl. 3. *Smith v. District of Columbia*, 436 A.2d 53, 1981 D.C. App. LEXIS 375 (1981).

Junkshops or pawnbrokers.

Consent of adjoining property owners not condition to issuance of license to junk dealer. *Coombe v. U.S. ex rel. Selis*, 3 F.2d 714, 1925 U.S. App. LEXIS 3780 (1925).

Police regulation requiring consent of adjoining owners to operation of junkshop held not to require consent on transfer of business, in view of administrative interpretation. *Coombe v. U.S. ex rel. Selis*, 3 F.2d 714, 1925 U.S. App. LEXIS 3780 (1925).

Regulation prohibiting operation of junkshop without consent of property owners held not within police power. *Coombe v. U.S. ex rel. Selis*, 3 F.2d 714, 1925 U.S. App. LEXIS 3780 (1925).

Statutory classification, under which individuals are allowed to maintain and assemble firearms at their places of business but not at home, does not deny equal protection. D.C. Code § 6-1872; U.S. Const. Amend. 14. *McIntosh v. Washington*, 395 A.2d 744, 1978 D.C. App. LEXIS 365 (1978).

Licenses for occupations and privileges.

Statute specifically enumerating classes of business requiring consent of adjoining property owners presumed not applicable to business not enumerated. *Coombe v. U.S. ex rel. Selis*, 3 F.2d 714, 1925 U.S. App. LEXIS 3780 (1925).

Motor vehicles.

Act Cong. Jan. 26, 1887, § 1, 24 Stat. 368, authorizing commissioners of District of Columbia to regulate movement of vehicles on public streets and avenues, includes automobiles within term "vehicle," notwithstanding at time of enactment motor vehicles were unknown as practical means of conveyance. *White v. District of Columbia*, 4 F.2d 163, 1925 U.S. App. LEXIS 2916 (1925).

Police Regulations of District of Columbia, art. 12, § 5, requiring motor to be closed down when motor vehicle is left on street, held within authority of commissioners under Act Cong. Jan. 26, 1887, 24 Stat. 368, authorizing commissioners to regulate "movement of vehicles" on public streets; the quoted language being inclusive of control and management of vehicles in whole or in part. *White v. District of Columbia*, 4 F.2d 163, 1925 U.S. App. LEXIS 2916 (1925).

Police Regulations of District of Columbia, art. 12, § 5, requiring closing down of motor when motor vehicle is left on street, promulgated under authority of Act Cong. Jan. 26, 1887, § 1, Resolution Feb. 26, 1892, § 2, D.C. Code 1929, T. 20, § 34, and Act Cong. March 3, 1917, 39 Stat. 1004, 1012, as applied to movement of mail trucks, held not violative of Penal Code, § 201, 18 U.S.C. § 1701, prohibiting willful obstruction of passage of mail. *White v. District of Columbia*, 4 F.2d 163, 1925 U.S. App. LEXIS 2916 (1925).

Word "tamper" as used in police regulation making it unlawful for one other than a policeman or fireman to tamper with a motor vehicle without permission of owner means wrongful or harmful interference with motor vehicle plus physical touching or damaging of vehicle and an improper purpose or intent. *In re R.F.H.*, 354 A.2d 844, 1976 D.C. App. LEXIS 509 (1976).

Juvenile who was charged with violating police regulation prohibiting unlawful tampering with motor vehicle without owner's permission had standing to challenge regulation as being unconstitutionally vague. *In re R.F.H.*, 354 A.2d 844, 1976 D.C. App. LEXIS 509 (1976).

Police regulation making it unlawful to tamper with a motor vehicle without the owner's permission provided adequate notice and standards concerning what conduct was proscribed and was not unconstitutionally vague. *In re R.F.H.*, 354 A.2d 844, 1976 D.C. App. LEXIS 509 (1976).

Police regulation making it a violation to tamper with an automobile was clearly authorized under section of code which empowers the District of Columbia to make and enforce police regulations for protection of all property within the District of Columbia. D.C. Code § 1-226. *Batres v. District of Columbia*, 347 A.2d 585, 1975 D.C. App. LEXIS 278 (1975).

Police lines.

Provision of District of Columbia police line regulation authorizing establishment of a police line on "occasions [that] cause or may cause persons to collect on the public streets" is not unconstitutionally vague or overbroad as regards bounds of police discretion since such clause is restricted by the functional limitations that follow it, in that a police line must be

"necessary" to achieve one of three basic purposes, including exclusion of the public from vicinity of a riot or disorderly gathering or other emergency; word "disorderly" is not unconstitutionally vague and word "emergency" takes the color of the events preceding it in its clause. U.S. Const. Amend. 1. Washington Mobilization Committee v. Cullinane, 566 F.2d 107, 1977 U.S. App. LEXIS 13879 (C.A.D.C. 1977).

Word "necessary" in provision of District of Columbia police line regulation requiring every person present at scene of a described occasion to comply with any necessary order or instruction of a police officer is not unconstitutionally vague or overbroad since the word is to be given the same meaning as it has in prior sentence describing the situations authorizing establishment of a police line and, as in such sentence, it limits police discretion to accomplishment of specified and narrow purposes and cannot reasonably be construed to authorize the police to issue orders infringing peaceful exercise of First Amendment rights. U.S. Const. Amend. 1. Washington Mobilization Committee v. Cullinane, 566 F.2d 107, 1977 U.S. App. LEXIS 13879 (C.A.D.C. 1977).

Since District of Columbia police line regulation deals only with extraordinary or emergency occasions in which substantial factors of unpredictability exist, the regulation's definition of the scope of police discretion in functional terms is reasonable and meticulous specificity is not required; ordinance is not unconstitutionally vague for failure to set out the "mechanics" of the police line, such as geographic area, number of officers deployed, means of maintaining a line against assault, how long the line is to be maintained and how to announce to the public initiation of a line. U.S. Const. Amend. 1. Washington Mobilization Committee v. Cullinane, 566 F.2d 107, 1977 U.S. App. LEXIS 13879 (C.A.D.C. 1977).

Police power, generally.

District of Columbia City Council, while possessing no inherent legislative authority, does have broad delegation of police power from Congress. D.C. Code § 1-226. Firemen's Ins. Co. v. Washington, 483 F.2d 1323, 1973 U.S. App. LEXIS 8554 (C.A.D.C. 1973).

Fact that no previous cases upheld the municipality's exercise of police power to regulate insurance did not compel conclusion that the District of Columbia City Council was without such power. D.C. Code § 1-226. Firemen's Ins. Co. v. Washington, 483 F.2d 1323, 1973 U.S. App. LEXIS 8554 (C.A.D.C. 1973).

There is strong presumption of constitutionality afforded to regulations regulating businesses under police power in interest of public safety, and one attacking such regulations on due process grounds carries heavy burden of showing that regulation is unreasonable and

has no rational relationship to objective sought to be obtained. D.C. Code §§ 1-226, 47-2345(a). Vanderhoof v. District of Columbia, 269 A.2d 112, 1970 D.C. App. LEXIS 342 (App. 1970).

It would be improper to proclaim a District of Columbia police regulation and arrest a person for violating it without affording a reasonable period of time for notice. D.C. Code § 1-226. Glover v. District of Columbia, 250 A.2d 556, 1969 D.C. App. LEXIS 210 (App. 1969).

Police radar.

Defendants who were not charged with use of radar jammer, expressly forbidden by police regulation, lacked standing to assert unconstitutionality of that portion of police regulation. Smith v. District of Columbia, 436 A.2d 53, 1981 D.C. App. LEXIS 375 (1981).

Defendants had no standing to assert unconstitutionality of police regulation prohibiting possession of police radar detector in motor vehicle, in so far as regulation might be applied to possession by shipper or private person carrying device in trunk of his auto, where defendants were not convicted for either of those modes of possession. Smith v. District of Columbia, 436 A.2d 53, 1981 D.C. App. LEXIS 375 (1981).

Police regulation prohibiting possession or use of "any device designed to detect. . . police radar was not unduly vague or arbitrary and did not violate due process by establishing irrebuttable presumption. U.S. Const. Amend. 14. Smith v. District of Columbia, 436 A.2d 53, 1981 D.C. App. LEXIS 375 (1981).

Police regulation prohibiting possession of police radar detector in motor vehicle was not preempted by Federal Communications Act. Communications Act of 1934, § 1 et seq., 47 U.S.C. § 151 et seq.; U.S. Const. Art. 6, cl. 2. Smith v. District of Columbia, 436 A.2d 53, 1981 D.C. App. LEXIS 375 (1981).

Public health.

Prosecution for interfering with Health Department inspector in performance of official duties by refusing to unlock door on ground that inspection of defendant's home without a search warrant would violate her constitutional rights was an appropriate case for application of general policy against deciding constitutional questions if the record permits final disposition of cause on nonconstitutional grounds, since a decision of the constitutional requirement for a search in such case might have far-reaching and unexpected implications as to closely related questions not before the court. U.S. Const. Amend. 4. District of Columbia v. Little, 70 S.Ct. 468, 1950 U.S. LEXIS 2295 (U.S. Dist. Col. 1950).

Defendant's refusal to unlock door of her home for District of Columbia Health Department inspector accompanied by remonstrances

on ground that inspection without defendant's consent or a search warrant would violate constitutional guarantee against unreasonable search did not constitute "interfering with officer" in performance of official duties in violation of district regulation making such interference a misdemeanor, regardless of whether inspector had a lawful right to inspect premises without a warrant, and hence decision of constitutional question as to necessity for a warrant was unnecessary. U.S. Const. Amend. 4. District of Columbia v. Little, 70 S.Ct. 468, 1950 U.S. LEXIS 2295 (U.S. Dist. Col. 1950).

On appeal from order of district court compelling District of Columbia officials to reopen public health clinic which had been closed, interests served by abstention doctrine did not require Court of Appeals to delay further resolution of dispute, even if abstention may have been mandated by uncertainty of local law issue or by difficult question of local law bearing on policy problems of substantial public import, where decision to abstain on appeal would create greater potential for disruption of local health care policy. D.C. Code 1978 Supp. §§ 1-171 to 1-171r, 1-1501 to 1-1510, 32-322; Spivey v. Barry, 665 F.2d 1222, 1981 U.S. App. LEXIS 17915 (C.A.D.C. 1981).

In action challenging closing of public health clinic by District of Columbia officials, claim that closing of clinic without affording patients a hearing violated due process clause of Fifth Amendment was substantial enough to permit exercise of pendent jurisdiction over closely related local law claims. D.C. Code 1978 Supp. §§ 1-171 to 1-171r, 1-1501 to 1-1510, 32-322; U.S. Const. Amend. 5; 18 U.S.C. § 1343. Spivey v. Barry, 665 F.2d 1222, 1981 U.S. App. LEXIS 17915 (C.A.D.C. 1981).

Municipal regulations which protect the public health, prevent nuisances and the like, applicable by terms and practice to conditions infringing upon the public interest are valid. District of Columbia v. Little, 178 F.2d 13, 1949 U.S. App. LEXIS 2477 (C.A.D.C. 1949).

Unless the health condition which is the object of inspection amounts to an immediate danger or a dangerous nuisance per se, municipal authorities would be acting beyond their powers in taking any summary action to abate such conditions. Little v. District of Columbia, 62 A.2d 874, 1948 D.C. App. LEXIS 237 (Cr.App. 1948).

When health laws and ordinances appear to violate a constitutional right, the courts must carefully weigh the value of the end accomplished against the restrictions suffered. Little v. District of Columbia, 62 A.2d 874, 1948 D.C. App. LEXIS 237 (Cr.App. 1948).

Generally, health laws and ordinances are accorded liberal construction because their exercise is largely discretionary. Little v. District

of Columbia, 62 A.2d 874, 1948 D.C. App. LEXIS 237 (Cr.App. 1948).

Generally, public authorities may employ all necessary means to protect public health and in so doing may provide for inspection of premises as a health measure. Little v. District of Columbia, 62 A.2d 874, 1948 D.C. App. LEXIS 237 (Cr.App. 1948).

Where a regulation provides for abatement of a health nuisance only after notice and hearing, a health officer cannot inspect, when challenged, without the usual preliminary steps for search. Little v. District of Columbia, 62 A.2d 874, 1948 D.C. App. LEXIS 237 (Cr.App. 1948).

Public places.

The Constitution mandates that access to the streets, sidewalks, parks and other similar public places for purpose of exercising First Amendment rights cannot be denied broadly and absolutely. U.S. Const. Amend. 1. Washington Mobilization Committee v. Cullinane, 566 F.2d 107, 1977 U.S. App. LEXIS 13879 (C.A.D.C. 1977).

The prohibition of the use of open spaces, public grounds, and streets for private purposes by Act May 17, 1848, § 13 (9 Stat. 229), by Act April 6, 1870 (16 Stat. 82) and by an ordinance adopted in 1856, applied only to permanent obstructions or occupancy of the public places of streets, and did not prohibit the temporary use thereof. Crane v. District of Columbia, 289 F. 557, 1923 U.S. App. LEXIS 2000 (1923).

Standing.

Defendants lacked standing to challenge application of statute to circumstances beyond those for which they were convicted. Smith v. District of Columbia, 436 A.2d 53, 1981 D.C. App. LEXIS 375 (1981).

Traffic regulations.

Statute prohibiting the District of Columbia Council from legislating with regard to the organization and jurisdiction of the District of Columbia courts did not prohibit the Council from enacting Traffic Adjudication Act decriminalizing certain traffic violations. D.C. Code 1973, § 40-603(i); D.C. Code 1978 Supp. §§ 1-121 et seq., 1-147(a)(4), (c)(1), 1-1501 et seq.; D.C. Code 1980 Supp. § 40-1101 et seq. District of Columbia v. Sullivan, 436 A.2d 364, 1981 D.C. App. LEXIS 377 (1981).

District of Columbia Council has authority to, and intended to create an exception to contested case review by the Court of Appeals under the District of Columbia Administrative Procedure Act for certain cases adjudicated under the Traffic Adjudication Act; therefore, even though the adjudicative nature of such proceedings was functionally consistent with the general definition of a contested case, there was no conflict between the Traffic Adjudication

Act and the District of Columbia Administrative Procedure Act. D.C. Code 1973, § 40-603(i); D.C. Code 1978 Supp. §§ 1-121 et seq., 1-147(a)(1), 1-1501 et seq.; D.C. Code 1980 Supp. § 4-1101 et seq. District of Columbia v. Sullivan, 436 A.2d 364, 1981 D.C. App. LEXIS 377 (1981).

Vendors.

Vehicular traffic regulations govern movement of mail trucks. *White v. District of Columbia*, 4 F.2d 163, 1925 U.S. App. LEXIS 2916 (1925).

Act Jan. 26, 1887 (24 Stat. 368) authorizing the commissioners of the District of Columbia to make reasonable police regulations to locate places where licensed vendors shall stand, and governing their conduct upon the streets in relation to such business, did not empower the commissioners to prohibit street sales by either licensed or unlicensed vendors. *Crane v. District of Columbia*, 289 F. 557, 1923 U.S. App. LEXIS 2000 (1923).

Joint Resolution Feb. 26, 1892 (D.C. Code 1929, T. 20, § 34) limiting the power of the commissioners of the District of Columbia to such reasonable and usual police regulations as they may deem necessary for the protection of the lives, limb, health, comfort, and quiet of persons within the District, did not empower the commissioners to make a regulation prohibiting sales of articles by vendors on streets and public places, unless the articles themselves would endanger, disturb, annoy, or incommode the public. *Crane v. District of Columbia*, 289 F. 557, 1923 U.S. App. LEXIS 2000 (1923).

Prohibition against vending permit for bootblack stand on public place violated equal protection; no rational basis existed for distinguishing bootblack stand from other types of vendors; and there was no way of defining purpose of commissioners that adopted prohibition. *U.S. Const. Amends. 5, 14. Brown v. Barry*, 710 F. Supp. 352, 1989 U.S. Dist. LEXIS 2709 (1989).

Waste disposal.

Where licenses issued for collection and

transportation of solid wastes in or through the District of Columbia did not cover disposal of solid wastes in the District, separate disposal fee of \$5 per ton was a "license fee" authorized by statute, to the extent that the revenue therefrom was commensurate with the costs of supervision and regulation. D.C. Code §§ 1-226, 6-501, 6-504, 6-811, 6-812, 47-2344. *Metropolitan D. C. Refuse Haulers Asso. v. Washington*, 479 F.2d 1191, 1973 U.S. App. LEXIS 10459 (C.A.D.C. 1973).

Municipality had authority to enact regulation imposing disposal charge on commercial refuse haulers even though no such charge was imposed on governmental agencies or for residential refuse. D.C. Code §§ 1-226, 6-501, 6-504, 6-811 et seq., 47-2344. *Metropolitan D. C. Refuse Haulers Asso. v. Washington*, 360 F. Supp. 281, 1972 U.S. Dist. LEXIS 14429 (1972), affirmed by 479 F.2d 1191, 156 U.S. App. D.C. 208, 1973 U.S. App. LEXIS 10459 (1973).

District of Columbia regulation authorizing imposition of civil fine of up to \$1,300 on commercial property owners, for failure to properly store and containerize solid waste, did not violate due process. *Gary Inv. Corp. v. District of Columbia Dep't of Health*, 896 A.2d 193, 2006 D.C. App. LEXIS 145 (2006).

District of Columbia civil regulation requiring all solid wastes on commercial properties to be stored and containerized for collection in a manner that will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard, was not unconstitutionally vague, as would violate due process. *Gary Inv. Corp. v. District of Columbia Dep't of Health*, 896 A.2d 193, 2006 D.C. App. LEXIS 145 (2006).

It is within the police power of a municipal corporation to control and regulate the manner of collection and disposition of garbage, refuse, or filth, but such regulations must not unduly infringe upon individual rights. *Little v. District of Columbia*, 62 A.2d 874, 1948 D.C. App. LEXIS 237 (Cr.App. 1948).

§ 1-303.04. Building regulations.

(a) The Council of the District of Columbia is authorized and directed to make and the Mayor of the District of Columbia is authorized and directed to enforce such building regulations for the said District as the Council may deem advisable.

(b) Such rules and regulations made as above provided shall have the same force and effect within the District of Columbia as if enacted by Congress.

(June 14, 1878, 20 Stat. 131, ch. 194, §§ 1, 2.)

Cross references. — Electricity, authority of Council to make rules respecting production, use, and control, see § 2-131.

Plumbing and drainage, maintenance of house and public sewers, regulations governing, see §§ 2-135 and 2-135.

Section references. — This section is referred to in § 1-303.05.

Prior Codifications. — 1981 Ed., § 1-322. 1973 Ed., § 1-228.

New implementing regulations. — New implementing regulations: Pursuant to this section, the following new regulations were adopted in 1982: The "Enclosed Sidewalk Cafe Act of 1982" (D.C. Law 4-148, Sept. 17, 1982, 29 DCR 3361).

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of

Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(5) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Compliance.
Criminal penalties.
Customs and usages.
Fees.
Fire safety.
Judicial notice.
Landlord and tenant.
New construction.
Promulgation of regulations.
Public improvements.
Review.
Temporary permits.
Torts.
Validity of regulations.

Compliance.

Fire regulations promulgated by Commissioners of District of Columbia requiring the correction of deficiencies in existing rooming houses were not so burdensome as to make compliance unreasonably onerous or constitute a confiscation of property, especially where provision was made for an owner to apply to Board of Appeals and Review for the grant of a variance if compliance was deemed by owner to be unduly burdensome. D.C. Code 1961, § 5-317. *Jones v. District of Columbia*, 212 F.Supp. 438, 1962 U.S. Dist. LEXIS 4749 (D.D.C.1962).

Criminal penalties.

Fact that government had been unsuccessful in attempting to impose criminal penalties upon rooming house operators for failure to abide by District of Columbia building code regulations had no application in subsequent civil action to determine validity of regulations.

Jones v. District of Columbia, 212 F.Supp. 438, 1962 U.S. Dist. LEXIS 4749 (D.D.C.1962).

Customs and usages.

The regulations issued by President Washington governing the sale of lots in the original federal city, and providing for the use of party walls by adjoining owners on the payment of a proportionate part of the cost, which were adopted as the building regulations of the district commissioners under the authority of Act June 14, 1878, 20 Stat. 131, which provided the regulations should have the force of law, and which have been adopted and followed by numerous lot owners outside the federal city, have become such a general custom as to raise an implied agreement that, where party walls were erected in the outlying district, the same obligation to contribute to the cost of the wall arose as in the case of a wall in the federal city, if the adjoining owner used the wall. *Walker v. Gish*, 43 S.Ct. 174, 1923 U.S. LEXIS 2484 (U.S. Dist. Col. 1923).

Fees.

The fee demanded by the District of Columbia for the issuance of a building permit for an apartment house in accordance with the schedule of fees adopted under the authority given by Act March 3, 1909 (D.C. Code 1929, T. 10, § 23 and T. 20, § 460), which was not shown to be excessive in view of the character and extent of the service rendered, was valid, and was not a levy of a tax which was invalid, because the taxing power may not be delegated. *Simmons v. District of Columbia*, 290 F. 347, 1923 U.S. App. LEXIS 1823 (1923).

Fire safety.

Fire prevention provisions of the District of

Columbia Building Code were not unconstitutional on theory of vagueness even though drawn in technical language which could not be understood by laymen, where such language was understandable by persons with knowledge in the field. *Jones v. District of Columbia*, 323 F.2d 306, 1963 U.S. App. LEXIS 4540 (C.A.D.C. 1963).

Fire regulations promulgated by Commissioners of District of Columbia were not invalid on ground that appropriate public hearing had not been held where notice had been given and hearing had been held similar in character and purpose to hearings held by congressional committees, even though findings could not be made from the transcript to support each regulation adopted following the hearing. *D.C. Code 1961*, § 5-317. *Jones v. District of Columbia*, 212 F.Supp. 438, 1962 U.S. Dist. LEXIS 4749 (D.D.C.1962).

Judicial notice.

It is a matter of common knowledge that the failure of builders in erecting structures for public use to conform to recognized standards has often resulted in disaster and tragedy, and that means for enforcing prescribed standards are necessary. *Simmons v. District of Columbia*, 290 F. 347, 1923 U.S. App. LEXIS 1823 (1923).

It is a matter of common knowledge that the failure of builders in erecting structures for public use to conform to recognized standards has often resulted in disaster and tragedy, and that means for enforcing prescribed standards are necessary, and those facts are presumed to have been in the contemplation of Congress when it adopted Act March 3, 1909 (D.C. Code 1929, T. 10, § 23 and T. 20, § 460), supplementing Act June 14, 1878 (20 Stat. 131), and authorizing the commissioner to prescribe a schedule of fees for building permits. *Simmons v. District of Columbia*, 290 F. 347, 1923 U.S. App. LEXIS 1823 (1923).

Landlord and tenant.

Evidence of landlord's failure to comply with statutes and regulations thereunder relative to stair treads and lights in hallways and stairways of apartment buildings, while not conclusive of landlord's negligence, held evidence of negligence sufficient to take case to jury in tenant's action for injuries resulting from fall on common stairs (D.C. Code 1929, T. 25, §§ 294, 296; Act of June 14, 1878, 20 Stat. 131). *Hill v. Raymond*, 81 F.2d 278, 1935 U.S. App. LEXIS 3978 (1935).

Contributory negligence of tenant in apartment building who fell while using common unlighted stairs, without providing himself with a light, and with knowledge of landlord's failure to provide lights, as required by statute and municipal regulations, held question for jury (D.C. Code 1929, T. 25, §§ 294, 296; Act of

June 14, 1878, 20 Stat. 131). *Hill v. Raymond*, 81 F.2d 278, 1935 U.S. App. LEXIS 3978 (1935).

Statute requiring owner to install and maintain hall and stairway lights in apartment houses and regulations of District commissioners pursuant thereto held applicable to buildings erected prior to passage of act. D.C. Code 1929, T. 25, § 296. *Hill v. Raymond*, 81 F.2d 278, 1935 U.S. App. LEXIS 3978 (1935).

New construction.

Congress, in passing District of Columbia Emergency Rent Act, did not intend that an owner could regain possession only when he proposed to erect a new building, and therefore where landlord planned to raze demised building for parking lot project costing about \$8,000, landlord was entitled to possession under such act. D.C. Code 1940, §§ 1-228, 45-1605(b)(4). *Ancher v. Lamb*, 86 A.2d 533, 1952 D.C. App. LEXIS 138 (Cr.App. 1952).

Parking lot project was such "new construction" within District of Columbia Emergency Rent Act as entitled landlord to possession of demised premises. D.C. Code 1940, §§ 1-228, 45-1605(b)(4). *Ancher v. Lamb*, 86 A.2d 533, 1952 D.C. App. LEXIS 138 (Cr.App. 1952).

Where department of building inspection had issued raze permit authorizing demolition of demised buildings and had issued a building permit authorizing erection of shed on the leveled lot, which was to be used as a parking lot, there was sufficient approval of parking lot project plans by District of Columbia commissioners as to entitle landlord to possession of demised premises under District of Columbia Emergency Rent Act. D.C. Code 1940, §§ 1-228, 45-1605(b)(4). *Ancher v. Lamb*, 86 A.2d 533, 1952 D.C. App. LEXIS 138 (Cr.App. 1952).

Promulgation of regulations.

Although Act authorizing commissioners of the District of Columbia to promulgate regulations required a public hearing prior to promulgation of regulations, personal notice to property owners of public hearing was not necessary, and notice requirement was met by publication of notice of hearings in three newspapers of general circulation and by mailing of notice to 300 organizations which had requested notification. D.C. Code 1961, §§ 5-317 to 5-323. *Jones v. District of Columbia*, 323 F.2d 306, 1963 U.S. App. LEXIS 4540 (C.A.D.C. 1963).

Facts developed at public hearings held before promulgation of fire regulations under the District of Columbia Building Code did not necessarily have to support each and every provision of the regulations which resulted therefrom. D.C. Code 1961, §§ 5-317 to 5-323. *Jones v. District of Columbia*, 323 F.2d 306, 1963 U.S. App. LEXIS 4540 (C.A.D.C. 1963).

Building regulations must be reasonable and have tendency to promote public health, safety, or general welfare. *D.J. Dunigan, Inc., v. District of Columbia*, 44 F.2d 892, 1930 U.S. App. LEXIS 3449 (1930).

Authority of Commissioners of District of Columbia to promulgate building code provisions relating to fire regulations which had to be complied with before new occupancy permits for rooming houses would be issued could not be found in congressional grant of authority to issue either police regulations or building regulations, but was discoverable in grant of authority to promulgate regulations "for protection against fire." D.C. Code 1961, §§ 1-226, 1-228, 5-317. *Jones v. District of Columbia*, 212 F.Supp. 438, 1962 U.S. Dist. LEXIS 4749 (D.D.C.1962).

Public improvements.

Where District of Columbia Redevelopment Land Agency maintained properties acquired by it as residences only temporarily until relocation housing for residents becomes available and redevelopment or rehabilitation could be undertaken, the District of Columbia Housing Code was not directly applicable to the agency's temporary residential properties. Uniform Relocation Assistance and Real Property Acquisition Policies Act, § 210, 42 U.S.C. § 4630; D.C. Code § 1-228. *Jones v. District of Columbia Redevelopment Land Agency*, 499 F.2d 502, 1974 U.S. App. LEXIS 8982 (C.A.D.C. 1974), US Supreme Court certiorari denied by 423 U.S. 937, 96 S. Ct. 299, 46 L. Ed. 2d 271, 1975 U.S. LEXIS 3281 (1975).

Review.

The constitutional validity of the building regulations of the District of Columbia, which by Act June 14, 1878, 20 Stat. 131, are given the effect of congressional legislation, was seasonably raised by request for charge at the trial in the Supreme Court of the District and by proper assignment of error in the proceedings for review, so that the question can be reviewed by the United States Supreme Court under Judicial Code, § 250, 36 Stat. 1159. *Walker v. Gish*, 43 S.Ct. 174, 1923 U.S. LEXIS 2484 (U.S. Dist. Col. 1923).

Temporary permits.

Temporary certificates of occupancy issued to landlords did not relieve them from obtaining new certificates of occupancy under subsequently promulgated District of Columbia Building Code. D.C. Code 1961, § 5-318. *Jones v. District of Columbia*, 323 F.2d 306, 1963 U.S. App. LEXIS 4540 (C.A.D.C. 1963).

Rooming house occupancy permits for District of Columbia issued under emergency conditions when certain requirements were suspended in 1943 were temporary permits notwithstanding that Commissioners had al-

lowed them to remain in effect over a substantial period of time, and notice ultimately given in 1961 that new permits would be required constituted notices of expiration and not of revocation and did not require a grant of authority to Commissioners to revoke without hearing. *Jones v. District of Columbia*, 212 F.Supp. 438, 1962 U.S. Dist. LEXIS 4749 (D.D.C.1962).

Torts.

In action for injuries allegedly resulting from projection of hinge of vault covering above level of sidewalk, provision of District of Columbia building code governing paving over vaults was admissible, though it had been adopted after construction of the vault involved and was not retroactive, is relevant in determining the common-law standard of care required. D.C. Code 1961, § 1-228. *Curtis v. District of Columbia*, 363 F.2d 973, 1966 U.S. App. LEXIS 7323 (C.A.D.C. 1966).

In action against District of Columbia and others for injuries resulting from sidewalk defects, jury was not invalidly composed because panel consisted almost entirely of government employees. *Curtis v. District of Columbia*, 363 F.2d 973, 1966 U.S. App. LEXIS 7323 (C.A.D.C. 1966).

There is a strong presumption of validity of regulations promulgated by Commissioners of District of Columbia acting under grant of authority from Congress and burden of showing a regulation to be unreasonable and oppressive rests upon party attacking it. *Jones v. District of Columbia*, 212 F.Supp. 438, 1962 U.S. Dist. LEXIS 4749 (D.D.C.1962).

Validity of regulations.

Provisions of District of Columbia Building Code, like municipal ordinances, were protected by a presumption of constitutionality, and they could not be declared unconstitutional unless clearly arbitrary. *Jones v. District of Columbia*, 323 F.2d 306, 1963 U.S. App. LEXIS 4540 (C.A.D.C. 1963).

Provisions of District of Columbia Building Code relative to fire safety were not unconstitutional merely because they granted discretion to an administrative officer to grant variances in limited cases. *Jones v. District of Columbia*, 323 F.2d 306, 1963 U.S. App. LEXIS 4540 (C.A.D.C. 1963).

Regulation prohibiting construction of fence wall higher than 7 feet above street grade, under certain circumstances, held unreasonable, arbitrary, and unjustly discriminatory as applied to land above street grade. *D.J. Dunigan, Inc., v. District of Columbia*, 44 F.2d 892, 1930 U.S. App. LEXIS 3449 (1930).

Enforcement of apparently lawful building regulation in manner discriminating against part of community for no lawful reason will be

invalidated. *D.J. Dunigan, Inc., v. District of Columbia*, 44 F.2d 892, 1930 U.S. App. LEXIS 3449 (1930).

§ 1-303.05. Additional penalties for violation of regulations.

The Council of the District of Columbia is hereby authorized to prescribe reasonable penalties of a fine not to exceed \$300 or imprisonment not to exceed 10 days, in lieu of or in addition to any fine, or to prescribe civil fines or other civil sanctions for the violation of any building regulation promulgated under authority of § 1-303.04, and any regulation promulgated under authority of § 1-303.01, and any regulation promulgated under authority of § 1-303.03.

(Dec. 17, 1942, 56 Stat. 1056, ch. 762, § 7; Oct. 5, 1985, D.C. Law 6-42, § 446, 32 DCR 4450; Feb. 5, 1994, D.C. Law 10-68, § 5, 40 DCR 6311.)

Section references. — This section is referred to in § 1-303.41.

Prior Codifications. — 1981 Ed., § 1-316. 1973 Ed., § 1-224a.

Legislative history of Law 6-42. — For legislative history of D.C. Law 6-42, see Historical and Statutory Notes following § 1-303.01.

Legislative history of Law 10-68. — Law 10-68, the “Technical Amendments Act of 1993,” was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commis-

sioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(2) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Indigent defendants.
Landlord and tenant, liability.
Public employment.
Torts, statutory standards.
Vendors.

Indigent defendants.

In view of rule that where defendant is indigent, jail sentence imposed as alternative to payment of fine should not exceed maximum prescribed for offense, indigent defendant who was convicted of tampering with an automobile would be remanded for resentencing, with alternative sentence in default of payment of \$100 fine not to exceed ten days. D.C. Code §§ 1-224a, 16-706. *Batres v. District of Colum-*

bia, 347 A.2d 585, 1975 D.C. App. LEXIS 278 (1975).

Rule that superior court may order commitment for term as long as one year to enforce payment of court-ordered fine has exception where record discloses that defendant is indigent and that court must have been aware of his inability to pay fine, and in such case alternative sentence should not exceed maximum prescribed for offense. D.C. Code § 16-706. *Batres v. District of Columbia*, 347 A.2d 585, 1975 D.C. App. LEXIS 278 (1975).

Landlord and tenant, liability.

Under housing regulation requiring owner or licensee of each residential building to provide and maintain facilities, utilities and services required by regulation providing that each fa-

cility or utility shall be properly and safely installed and maintained in a safe and good working condition, a duty is imposed upon landlord alone. D.C. Code 1951, §§ 1-224a, 47-2347. *Whetzel v. Jess Fisher Management Co.*, 282 F.2d 943, 1960 U.S. App. LEXIS 4009 (C.A.D.C. 1960).

Under District of Columbia housing regulations requiring that each interior wall or ceiling be structurally sound and providing that no owner, licensee or tenant shall occupy or permit occupancy of habitation in violation of regulations, actual knowledge by landlord of defective ceiling was not required to impose liability for injury to tenant caused by defective ceiling, but it was enough if in the exercise of reasonable care landlord should have known that the condition of ceiling violated standards of housing code. *Whetzel v. Jess Fisher Management Co.*, 282 F.2d 943, 1960 U.S. App. LEXIS 4009 (C.A.D.C. 1960).

Public employment.

Where District of Columbia and others considered relation between public employment applicant's criminal record and the position sought and the overall determination of his eligibility was made in substantial compliance with District of Columbia personnel manual chapter, applicant's constitutional rights were not violated by District of Columbia's refusal to hire him. D.C. Code § 1-316; U.S. Const. Amends. 5, 14. *McGarvey v. District of Columbia*, 468 F. Supp. 687, 1979 U.S. Dist. LEXIS 13332 (1979).

Application of District of Columbia code section, authorizing exclusion of convicted felon from public employment, did not discriminate against public employment applicant on nonmerit basis within purview of Civil Service Commission's regulations. D.C. Code § 1-316. *McGarvey v. District of Columbia*, 468 F. Supp. 687, 1979 U.S. Dist. LEXIS 13332 (1979).

Applicant for public employment who was not a resident of geographical area served by District of Columbia as required under the Comprehensive Employment Training Act program and who had not applied for employment under such a program lacked standing to raise claim that District of Columbia statute, authorizing exclusion of convicted felons from public

employment, as applied to him, raised an artificial employment barrier in violation of the Comprehensive Training Act of 1973 and regulations promulgated thereunder. Comprehensive Employment Training Act of 1973, §§ 2 et seq., 121(a), 29 U.S.C. §§ 801 et seq., 823(a); D.C. Code § 1-316. *McGarvey v. District of Columbia*, 468 F. Supp. 687, 1979 U.S. Dist. LEXIS 13332 (1979).

Class action seeking declaration that District of Columbia and other's application of District of Columbia code section, authorizing exclusion of convicted felons from public employment, was violation of the Comprehensive Training Act of 1973, the Rehabilitation Act of 1973, United States Civil Service Commission regulations, and the due process clause of the Fifth Amendment involved controversy arising under the Constitution and laws of the United States and an amount, as measured by injury to be prevented by requested relief, in excess of \$10,000, so as to give federal court federal question jurisdiction. D.C. Code § 1-316; Rehabilitation Act of 1973, § 504, 29 U.S.C. § 794; Comprehensive Employment and Training Act of 1973, § 205, 29 U.S.C. § 845; U.S. Const. Amend. 5; 18 U.S.C. §§ 1331, 1343(4); Civil Rights Act of 1964, § 706(f), 42 U.S.C. § 2000e-5(f)(3). *McGarvey v. District of Columbia*, 468 F. Supp. 687, 1979 U.S. Dist. LEXIS 13332 (1979).

Torts, statutory standards.

If legislature prescribes a standard of conduct in order to protect life, limb, or property from certain types of risk, and harm to interest sought to be protected comes about through breach of prescribed standard, then statutory standard will at least be considered in determining civil rights and liabilities. *Whetzel v. Jess Fisher Management Co.*, 282 F.2d 943, 1960 U.S. App. LEXIS 4009 (C.A.D.C. 1960).

Vendors.

Regulatory prohibition on vending in an entrance zone provided for both civil and criminal sanctions. D.C. Code 1981, §§ 1-315(9), 1-316; D.C. Mun. Regs. title 24, § 510.21. *Karriem v. District of Columbia*, 717 A.2d 317, 1998 D.C. App. LEXIS 152 (1998), writ of certiorari denied by 526 U.S. 1147, 119 S. Ct. 2025, 143 L. Ed. 2d 1036, 1999 U.S. LEXIS 3722, 67 U.S.L.W. 3732 (1999).

Part B

OUTDOOR SIGNS.

§ 1-303.21. Regulations.

The Council of the District of Columbia is authorized and empowered after public hearings to make, and the Mayor of the District of Columbia is

authorized and empowered to enforce, such regulations as the Council may deem advisable to (insofar as necessary to promote the public health, safety, morals, and welfare) control, restrict, and govern the erection, hanging, placing, painting, display, and maintenance of all outdoor signs and other forms of exterior advertising on public ways and public space under the Mayor's control and on private property within public view within the District of Columbia, and such regulations as may be promulgated hereunder shall have the force and effect of law.

(Mar. 3, 1931, 46 Stat. 1486, ch. 399, § 1.)

Cross references. — Real estate, sale or rent signs, see 42-1801.

Section references. — This section is referred to in § 1-303.23.

Prior Codifications. — 1981 Ed., § 1-325. 1973 Ed., § 1-231.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(a) of the Sign Regulation Emergency Amendment Act of 2012 (D.C. Act 19-387, July 11, 2012, 59 DCR 8491).

For temporary (90 day) addition, see § 2(b) of the Sign Regulation Emergency Amendment Act of 2012 (D.C. Act 19-387, July 11, 2012, 59 DCR 8491).

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of

Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(8) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 1-303.22. License required; fee.

(a) No person, persons, firm, or corporation shall engage in the business of erecting, hanging, placing, painting, displaying, or maintaining any sign for outdoor display within the District of Columbia without first having obtained a license therefor from the Superintendent of Licenses of the District of Columbia, which license shall bear an identification number; provided, that no license shall issue without the prepayment of \$14 to the District of Columbia Treasurer, and a fee of \$28, paid biennially. For good cause shown the Mayor of the District of Columbia shall have the power to reject any application for a license hereunder, or, where license has been issued, to revoke it, or, upon determination of liability therefor, to impose civil fines pursuant to Chapter 18 of Title 2.

(b) Any license issued pursuant to this section shall be issued as a General Services and Repair endorsement to a basic business license under the basic business license system as set forth in subchapter I-A of Chapter 28 of Title 47 of the District of Columbia Code.

(Mar. 3, 1931, 46 Stat. 1486, ch. 399, § 2; Sept. 14, 1976, D.C. Law 1-82, title I, § 102, 23 DCR 2461; Oct. 5, 1985, D.C. Law 6-42, § 421, 32 DCR 4450; Sept. 26, 1995, D.C. Law 11-52, § 301, 42 DCR 3684; Apr. 20, 1999, D.C. Law 12-261, § 2003(a), 46 DCR 3142; Oct. 28, 2003, D.C. Law 15-38, § 3(a), 50 DCR 6913.)

Section references. — This section is referred to in §§ 1-303.23 and 9-1159.

Prior Codifications. — 1981 Ed., § 1-326. 1973 Ed., § 1-232.

Effect of amendments. — D.C. Law 15-38, in subsec. (b), substituted "General Services and Repair endorsement to a basic business license under the basic" for "Class B General Services and Repair endorsement to a master business license under the master".

Emergency legislation. — For temporary (90 day) amendment of section, see § 3(a) of Streamlining Regulation Emergency Act of 2003 (D.C. Act 15-145, August 11, 2003, 50 DCR 6896).

For temporary (90 day) repeal of section, see § 2(c) of the Sign Regulation Emergency Amendment Act of 2012 (D.C. Act 19-387, July 11, 2012, 59 DCR 8491).

Legislative history of Law 1-82. — Law 1-82 was introduced in Council and assigned Bill No. 1-237, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on March 23, 1976, and April 6, 1976, respectively. Signed by the Mayor on June 22, 1976, it was assigned Act No. 1-135 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-42. — For legislative history of D.C. Law 6-42, see Historical and Statutory Notes following § 1-303.01.

Legislative history of Law 11-52. — Law 11-52, the "Omnibus Budget Support Act of 1995," was introduced in Council and assigned Bill No. 11-218, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 19, 1995, and June 6, 1995, respectively. Signed by the Mayor on July 13, 1995, it was assigned Act No. 11-94 and transmitted to both Houses of Congress for its review. D.C. Law 11-52 became effective on September 26, 1995.

Legislative history of Law 12-261. — Law 12-261, the "Second Omnibus Regulatory Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-845, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615 and transmitted to both Houses of Congress for its review. D.C. Law 12-261 became effective on April 20, 1999.

Legislative history of Law 15-38. — Law 15-38, the "Streamlining Regulation Act of 2003," was introduced in Council and assigned Bill No. 15-19, which was referred to Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 3, 2003, and July 8, 2003, respectively. Signed by the Mayor on August 11, 2003, it was assigned Act No. 15-146 and transmitted to

both Houses of Congress for its review. D.C. Law 15-38 became effective on October 28, 2003.

Editor's notes. — Office of Collector of Taxes abolished: The Office of the Collector of Taxes was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Collector of Taxes including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same Order provided for the Office of the Collector of Taxes headed by a Collector in the Finance Office, and abolished the previously existing Office of the Collector of Taxes. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, which provided that the Finance Office (consisting of the Office of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) would continue under the direction and control of the Director of General Administration, and that the Treasury Division would perform the function of collecting revenues of the District of Columbia and depositing the same with the Treasurer of the United States. Organization Order No. 121 was revoked by Organization Order No. 3 dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969. The collection functions of the Director of the Department of Finance and Revenue was transferred to the District of Columbia Treasurer by § 47-316 on March 5, 1981.

Transfer of function: Commissioner's Order No. 69-96, dated March 7, 1969, transferred to the Director of the Department of Economic Development the function of business and professional licensing. The Department of Economic Development was replaced by the Department of Licenses, Investigation and Inspections by Mayor's Order 78-42, dated February 17, 1978. The functions of the Department of Licenses, Investigations, and Inspections were transferred to the Department of Consumer and Regulatory Affairs by Reorgani-

zation Plan No. 1 of 1983, effective March 31, 1983.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 1-303.23. Penalties; publication of regulations.

(a) Any person, persons, firm, or corporation, whether as principal, agent, or employee, violating §§ 1-303.21 to 1-303.23 or any of the regulations promulgated pursuant to said sections shall, upon conviction thereof in the Superior Court of the District of Columbia, be fined not less than \$5 nor more than \$200 for each and every offense, and a like fine shall be imposed for each and every day thereafter that such violation of law shall continue: Provided, that the regulations promulgated hereunder shall be printed in one of the daily newspapers published in the District of Columbia, and no penalty prescribed for the violation of said regulations shall be enforced until 30 days after the publication of such regulations.

(b) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of §§ 1-303.21 to 1-303.23, or any rules or regulations issued under the authority of §§ 1-303.21 to 1-303.23, pursuant to Chapter 18 of Title 2. Adjudication of any infraction of §§ 1-303.21 to 1-303.23 shall be pursuant to Chapter 18 of Title 2.

(Mar. 3, 1931, 46 Stat. 1486, ch. 399, § 4; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); Oct. 5, 1985, D.C. Law 6-42, § 457, 32 DCR 4450.)

Prior Codifications. — 1981 Ed., § 1-327. 1973 Ed., § 1-233.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(d) of the Sign Regulation Emergency Amendment Act of

2012 (D.C. Act 19-387, July 11, 2012, 59 DCR 8491).

Legislative history of Law 6-42. — For legislative history of D.C. Law 6-42, see Historical and Statutory Notes following § 1-303.01

Part C GENERAL.

§ 1-303.41. Regulations for the keeping, leashing, and running at large of dogs.

The Council of the District of Columbia is hereby authorized and empowered to make and modify, and the Mayor of the District of Columbia is hereby

authorized and empowered to enforce, regulations in and for the District of Columbia to regulate the keeping and leashing of dogs and to regulate or prohibit the running at large of dogs, including penalties for violations of such regulations as provided in § 1-303.05.

(Sept. 13, 1961, 75 Stat. 498, Pub. L. 87-227, § 1.)

Cross references. — Disturbances of public peace, dogs at large, see 22-1311.

Prior Codifications. — 1981 Ed., § 1-317. 1973 Ed., § 1-224b.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(3) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia

Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Sufficiency of evidence.
Validity of regulations.

Sufficiency of evidence.

Evidence in prosecution of defendant on charges of permitting his dog to bark in manner disturbing to quiet of neighborhood and permitting his dog to go unleashed on public property was sufficient to establish scienter on defendant's part and to show disturbance of neigh-

borhood. *Parry-Hill v. District of Columbia*, 291 A.2d 505, 1972 D.C. App. LEXIS 381 (1972).

Validity of regulations.

With element of scienter read into regulation making it an offense for anyone to permit his dog to bark in manner disturbing to quiet of neighborhood, regulation was not unconstitutionally vague. *Parry-Hill v. District of Columbia*, 291 A.2d 505, 1972 D.C. App. LEXIS 381 (1972).

§ 1-303.42. Expenditures for emergencies.

When required by the public exigencies to meet conditions caused by emergencies such as riot, pestilence, public insanitary conditions, flood, fire, storm, and similar disasters, the Mayor of the District of Columbia, pursuant to regulations prescribed by the Council of the District of Columbia, is authorized to expend such amounts as may be necessary without regard to advertising provisions of § 2-225.05.

(Oct. 26, 1973, 87 Stat. 504, Pub. L. 93-140, § 1.)

Prior Codifications. — 1981 Ed., § 1-320. 1973 Ed., § 1-226a.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code,

§ 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 1-303.43. Regulations relative to firearms, explosives, and weapons.

The Council of the District of Columbia is hereby authorized and empowered to make, and the Mayor of the District of Columbia is hereby authorized and empowered to enforce, all such usual and reasonable police regulations, in addition to those already made under §§ 1-303.01 to 1-303.03 as the Council may deem necessary for the regulation of firearms, projectiles, explosives, or weapons of any kind in the District of Columbia.

(June 30, 1906, 34 Stat. 809, ch. 3932, § 4.)

Cross references. — Dangerous weapons, criminal provisions, see § 22-4501 et seq.

Dangerous weapons, licensing, regulation and supervision of dealers, see § 47-2838.

Firearms, fireworks, or loud noises, prohibition on Capitol grounds, see § 10-503.16.

Prior Codifications. — 1981 Ed., § 1-321. 1973 Ed., § 1-227.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(4) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Construction and application.

Construction with acts of Congress.

Delegation of authority.

Firearms.

Licensing.

Local authority, generally.

Projectiles.

Sales to children.

Weapons, statutory provisions.

Construction and application.

Authority given to District of Columbia in 1973 in Home Rule Act (HRA) over "all rightful subjects of legislation" gave power to District to enact laws regulating firearms and superseded qualified grant to District of specific authority to regulate firearms in 1906 Act; insofar as 1906 Act remained effective, it served only to clarify that new District of Columbia Council was body responsible for function of regulating firearms. *Heller v. District of Columbia*, 670 F.3d 1244, 2011 U.S. App. LEXIS 20130 (C.A.D.C. 2011).

Section of District of Columbia Code empowering council to make all regulations deemed necessary for regulation of firearms, a section of

act prohibiting the killing of wild birds and wild animals, conferred power to regulate firearms for the protection of people as well as wildlife. D.C. Code §§ 1-227, 22-3201 to 22-3217. *Maryland & District of Columbia Rifle & Pistol Assn. v. Washington*, 442 F.2d 123, 1971 U.S. App. LEXIS 11707 (C.A.D.C. 1971).

Home Rule Act's provision vesting legislative power in District of Columbia Council afforded Council authority to enact Firearms Control Regulations Act of 1975, notwithstanding Home Rule Act provision that Council was to have no authority to enact any act with respect to any provision of title of District of Columbia Code relating to criminal procedure or with respect to any provision of titles relating to crimes and treatment of prisoners during 24 months after members of Council first elected pursuant to such Act were to take office. D.C. Code §§ 1-144(a), 1-147(a)(9), 6-1801 et seq., 22-101 et seq., 23-101 et seq., 24-103 et seq. *McIntosh v. Washington*, 395 A.2d 744, 1978 D.C. App. LEXIS 365 (1978).

Construction with acts of Congress.

Congressional enactments for the District of Columbia prevail over local regulations in conflict with them. U.S. Const. art. 1, § 8, cl. 17.

Maryland & District of Columbia Rifle & Pistol Asso. v. Washington, 442 F.2d 123, 1971 U.S. App. LEXIS 11707 (C.A.D.C. 1971).

A municipal regulation cannot permit an act which statute forbids, or forbid an act which the statute permits. *Maryland & District of Columbia Rifle & Pistol Asso. v. Washington*, 442 F.2d 123, 1971 U.S. App. LEXIS 11707 (C.A.D.C. 1971).

Statutory and local regulations may coexist in identical areas although the latter, not inconsistently with the former, exact additional requirements or impose additional penalties. *Maryland & District of Columbia Rifle & Pistol Asso. v. Washington*, 442 F.2d 123, 1971 U.S. App. LEXIS 11707 (C.A.D.C. 1971).

The test of concurrent authority of legislature and municipality is the absence of conflict with the legislative will. *Maryland & District of Columbia Rifle & Pistol Asso. v. Washington*, 442 F.2d 123, 1971 U.S. App. LEXIS 11707 (C.A.D.C. 1971).

While the District of Columbia is invested with broad authority to prescribe local regulations, the ultimate power to legislate for the District resides solely in Congress. U.S. Const. art. 1, § 8, cl. 17. *Maryland & District of Columbia Rifle & Pistol Asso. v. Washington*, 442 F.2d 123, 1971 U.S. App. LEXIS 11707 (C.A.D.C. 1971).

Congressional enactments prevail over conflicting local regulations. *Jordan v. District of Columbia Board of Appeals & Review*, 315 A.2d 153, 1974 D.C. App. LEXIS 365 (1974).

Delegation of authority.

Congress may at any time withdraw authority previously delegated to the District of Columbia, and any regulations dependent on the delegation then lapse. U.S. Const. art. 1, § 8, cl. 17. *Maryland & District of Columbia Rifle & Pistol Asso. v. Washington*, 442 F.2d 123, 1971 U.S. App. LEXIS 11707 (C.A.D.C. 1971).

Congress may indulge the District of Columbia in the exercise of regulatory powers, enabling it to provide for its needs as deemed necessary or desirable. U.S. Const. art. 1, § 8, cl. 17. *Maryland & District of Columbia Rifle & Pistol Asso. v. Washington*, 442 F.2d 123, 1971 U.S. App. LEXIS 11707 (C.A.D.C. 1971).

Firearms.

A "firearm", by commonly accepted usage, necessarily connotes the action of a chemical explosive such as gunpowder, which action is in the nature of combustion of some sort of a weapon. *Tendler v. District of Columbia*, 50 A.2d 263, 1946 D.C. App. LEXIS 183 (Cr.App. 1946).

Licensing.

Applications for licenses to carry concealed weapons should be treated under proper regulatory criteria duly adopted. D.C. Code §§ 1-

227, 1-1502, 1-1505 to 1-1507, 22-3206. *Jordan v. District of Columbia Board of Appeals & Review*, 315 A.2d 153, 1974 D.C. App. LEXIS 365 (1974).

Whatever rule is used in District of Columbia to determine eligibility for a license to carry a handgun, it must be adopted, published, and applied according to law, and remain consistent with congressional policy. D.C. Code §§ 1-227, 1-1502, 1-1505 to 1-1507, 22-3206. *Jordan v. District of Columbia Board of Appeals & Review*, 315 A.2d 153, 1974 D.C. App. LEXIS 365 (1974).

Fact that certain of the police regulations governing applications for license to carry concealed weapon in District of Columbia had not been compiled and published as required by statute, did not require blind issuance of such a license to petitioner, who failed to satisfy such regulations. D.C. Code §§ 1-1502, 1-1505 to 1-1507, 22-3206. *Jordan v. District of Columbia Board of Appeals & Review*, 315 A.2d 153, 1974 D.C. App. LEXIS 365 (1974).

Statute authorizing superintendent of police of District of Columbia to issue a license to carry a concealed weapon when it appears that the applicant has good reason to fear injury to his person or property or has any other proper reason for carrying a pistol and that he is a suitable person to be so licensed did not preempt field of gun legislation and preclude chief of police from adopting additional license information requirements and criteria, specifically requirement that applicant present substantial evidence of a specific threat to his life that cannot be alleviated by use of conventional methods; such additional information is relevant to licensing decision and failure to furnish it forms an adequate basis for denial of the license. D.C. Code §§ 1-227, 22-3206. *Jordan v. District of Columbia Board of Appeals & Review*, 315 A.2d 153, 1974 D.C. App. LEXIS 365 (1974).

Local authority, generally.

Unsuccessful efforts by board of commissioners to obtain legislation supplementing 1932 gun control law enacted for the District of Columbia, and congressional inaction on the commissioners' requests, did not indicate doubt as to commissioners' authority to adopt gun control regulations and did not obliterate authority derived from 1906 statute authorizing gun control regulations. D.C. Code §§ 1-227, 22-3201 to 22-3217. *Maryland & District of Columbia Rifle & Pistol Asso. v. Washington*, 442 F.2d 123, 1971 U.S. App. LEXIS 11707 (C.A.D.C. 1971).

Enactment of gun control law for the District of Columbia in 1932 did not foreclose further exercise of power granted District by 1906 Act authorizing council to make and enforce all regulations deemed necessary for regulation of

firearms in absence of expression in 1932 Act of intent to preempt the entire field and in view of demonstrated design of the regulations to leave areas preempted by the statute unaffected. D.C. Code §§ 1-224, 1-224, subd. 3, 1-227; Joint Resolution Feb. 20, 1897, 29 Stat. 702. Maryland & District of Columbia Rifle & Pistol Assn. v. Washington, 442 F.2d 123, 1971 U.S. App. LEXIS 11707 (C.A.D.C. 1971).

Projectiles.

A "projectile" is a body projected by exterior force, and continuing in motion by its own inertia, as, for example, a missile for a firearm or cannon. *Tendler v. District of Columbia*, 50 A.2d 263, 1946 D.C. App. LEXIS 183 (Cr.App. 1946).

Sales to children.

An "air pistol" is not a "firearm", or a "missile", or a "projectile", within police regulation prohibiting the sale to children of such devices. *Tendler v. District of Columbia*, 50 A.2d 263, 1946 D.C. App. LEXIS 183 (Cr.App. 1946).

A police regulation prohibiting the sale of firearms to children may not be construed beyond its plain meaning though other provisions of the regulation may reveal an intent to include in the prohibition weapons not covered by the words used. *Tendler v. District of Columbia*, 50 A.2d 263, 1946 D.C. App. LEXIS 183 (Cr.App. 1946).

Weapons, statutory provisions.

Complaint alleging that District of Columbia statute regulating manner in which firearms were stored violated D.C. statute prohibiting police regulation that was not usual and reasonable, failed to state a claim upon which relief could be granted. *Seegars v. Ashcroft*, 297 F.Supp.2d 201, 2004 U.S. Dist. LEXIS 406 (2004), affirmed in part and reversed in part by

396 F.3d 1248, 364 U.S. App. D.C. 512, 2005 U.S. App. LEXIS 1965 (2005).

Firearms Control Regulations Act of 1975 would not prohibit company from selling handguns to qualified residents, but such sales would be subject to District of Columbia Council's authority to regulate conduct of dealers in dangerous or deadly weapons. D.C. Code §§ 6-1811(a), (a)(1), 6-1852, 47-2340. *McIntosh v. Washington*, 395 A.2d 744, 1978 D.C. App. LEXIS 365 (1978).

Phrase "brought into the district," within provision of Firearms Control Regulations Act of 1975 stating that firearms brought into District of Columbia must be immediately registered, does not refer to firearms packaged in their original shipping containers that are being transported in interstate commerce in a bona fide shipment; as so construed, the provision does not impose an unconstitutional burden on interstate commerce. D.C. Code § 6-1816(a). *McIntosh v. Washington*, 395 A.2d 744, 1978 D.C. App. LEXIS 365 (1978).

Statutory classification, under which individuals are allowed to maintain and assemble firearms at their places of business but not at home, does not deny equal protection. D.C. Code § 6-1872; U.S. Const. Amend. 14. *McIntosh v. Washington*, 395 A.2d 744, 1978 D.C. App. LEXIS 365 (1978).

Firearms Control Regulations Act of 1975 is not unconstitutionally vague. *McIntosh v. Washington*, 395 A.2d 744, 1978 D.C. App. LEXIS 365 (1978).

Firearms Control Regulations Act of 1975, in imposing criminal penalties on those who fail to register firearms regardless of their knowledge of the duty to register, does not deny due process. D.C. Code § 6-1876; U.S. Const. Amend. 14. *McIntosh v. Washington*, 395 A.2d 744, 1978 D.C. App. LEXIS 365 (1978).

§ 1-303.44. Regulations for construction, repair, and operation of elevators.

(a) The Council of the District of Columbia is hereby authorized and directed to make and publish such orders as may be necessary to regulate the construction, repair, and operation of all elevators within the District of Columbia, and prescribe such means of security as may be found necessary to protect life and limb.

(b) Any person or persons, or corporation, who shall neglect or refuse to comply with the orders made pursuant to this section shall, upon conviction thereof in the Superior Court of the District of Columbia, on information filed in the name of the District of Columbia, be fined not less than \$10 nor more than \$100 for each offense.

(c) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the orders made pursuant to this section in accordance

with Chapter 18 of Title 2. Adjudication of any infraction of this section shall be pursuant to Chapter 18 of Title 2.

(Mar. 3, 1887, 24 Stat. 580, ch. 390, §§ 1, 2; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); March 3, 1887, § 3, as added Oct. 5, 1985, D.C. Law 6-42, § 481, 32 DCR 4450.)

Prior Codifications. — 1981 Ed., § 1-323. 1973 Ed., § 1-229.

Legislative history of Law 6-42. — For legislative history of D.C. Law 6-42, see Historical and Statutory Notes following § 1-315.

New implementing regulations. — New implementing regulations: Pursuant to this section, the following new regulations were adopted in 1982: The “Elevator Code Amendment Act of 1981” (D.C. Law 4-91, Mar. 31, 1982, 29 DCR 683).

Pursuant to this section, the following new regulations were adopted in 1984: The “Apartment House Elevator Act of 1984” (D.C. Law 5-132, Mar. 13, 1985, 32 DCR 1717).

Delegation of Authority. — Delegation of authority under law promulgating rules for adoption of new construction codes, see Mayor’s Order 84-146, August 23, 1984.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commis-

sioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(6) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

Contributory negligence.

Assuming for sake of argument that elevator code required showing of heightened contributory negligence in order to bar recovery for elevator accident, trespasser who died after sustaining injuries when he deliberately crashed his 320-pound body into the door of an elevator and fell down vacant shaft was not within class that code was intended to cover, and consequently owner was required to establish only that trespasser was ordinarily contrib-

utorily negligent. D.C. Code 1981, § 1-323(a). *District of Columbia v. Brown*, 589 A.2d 384, 1991 D.C. App. LEXIS 74 (1991).

Municipal elevator code was not intended to protect against ordinary contributory negligence, so as to require a finding of heightened contributory negligence in order to bar recovery for elevator accident. D.C. Code 1981, § 1-323(a). *District of Columbia v. Brown*, 589 A.2d 384, 1991 D.C. App. LEXIS 74 (1991).

Subchapter III. Streets, Public Rights of Way, and Public Property.

§ 1-305.01. Cleaning streets, alleys, and avenues; maintenance of sewers.

The sweeping, cleaning, and removing all refuse and filthy accumulations in the streets, alleys, and avenues of the City of Washington, and the repairs and cleaning of the sewers, are necessary municipal objects, which belong to the current expenses of the same, to be paid for in money as other ordinary municipal expenses.

(Mar. 1, 1875, 18 Stat. 337, ch. 117; Feb. 11, 1895, 28 Stat. 650, ch. 79.)

Cross references. — Collection and disposal of garbage, see § 8-701 et seq.

Highways and sewers, regulations governing repair, see § 9-101.01.

Removal of snow and ice, public property, see § 9-601 et seq.

Prior Codifications. — 1981 Ed., § 1-329. 1973 Ed., § 1-235.

§ 1-305.02. Sale of street sweepings authorized.

The Mayor of the District of Columbia is authorized to sell sweepings from the streets, the amounts realized from such sales to be deposited in the treasury, to the credit of the General Fund of the District of Columbia.

(Apr. 27, 1904, 33 Stat. 373, ch. 1628; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7; June 28, 1944, 58 Stat. 533, ch. 300, § 18; Sept. 13, 1982, 96 Stat. 877, Pub. L. 97-258, § 5(b).)

Prior Codifications. — 1981 Ed., § 1-330. 1973 Ed., § 1-236.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 1-305.03. Maintenance of lights outside city limits.

The Mayor of the District of Columbia shall have power to erect light, and maintain lamp posts, with lamps, outside of the city limits, when, in his judgment, it shall be deemed proper or necessary.

(June 11, 1878, 20 Stat. 104, ch. 180, § 3.)

Cross references. — Lighting of streets and bridges, regulations, see §§ 9-301 and 9-507.

Prior Codifications. — 1981 Ed., § 1-328. 1973 Ed., § 1-234.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code § 1-207.14(a)), appropriate changes in terminology were made in this section.

Subchapter III-A. Comprehensive Plan.

Part A

GENERAL.

§ 1-306.01. District elements of comprehensive plan prepared; purposes.

(a) It is hereby declared that:

(1) The District of Columbia has prepared, through an exhaustive process of research, analysis, and review, including citizen involvement and consultation with affected federal, state and local governments, and planning agencies in the National Capital region, District elements of a 20-year Comprehensive Plan for the National Capital as required by § 2-1002(a) and by § 1-204.23(a).

(2) Ten District elements of the Comprehensive Plan for the National Capital are contained in this part: General Provisions; Economic Development; Housing; Environmental Protection; Transportation; Public Facilities; Urban Design; Preservation and Historic Features; Downtown; and Human Services.

(3) The District elements of the Comprehensive Plan for the National Capital contained in this part do not extend to any federal or international projects and developments, or to the United States Capitol buildings and grounds, or to any buildings and grounds under the care of the Architect of the Capitol.

(b) The purposes of the District elements of the Comprehensive Plan for the National Capital are to:

(1) Define the requirements and aspirations of District residents, and accordingly influence social, economic and physical development;

(2) Guide executive and legislative decisions on matters affecting the District and its citizens;

(3) Promote economic growth and jobs for District residents;

(4) Guide private and public development in order to achieve District and community goals;

(5) Maintain and enhance the natural and architectural assets of the District; and

(6) Assist in the conservation, stabilization, and improvement of each neighborhood and community in the District.

(Apr. 10, 1984, D.C. Law 5-76, § 2, 31 DCR 1049.)

Cross references. — National capital planning commission, see § 2-1002.

Prior Codifications. — 2001 Ed., § 1-301.62.

1981 Ed., § 1-245.

Legislative history of Law 5-76. — Law 5-76, the “District of Columbia Comprehensive Plan Act of 1984,” was introduced in Council and assigned Bill No. 5-282, which was referred to the Committee of the Whole. The Bill was

adopted on first and second readings on January 17, 1984 and January 31, 1984, respectively. Signed by the Mayor on February 23, 1984, it was assigned Act No. 5-112 and transmitted to both Houses of Congress for its review.

Editor’s notes. — District of Columbia Comprehensive Plan of 1984: Section 3 of D.C. Law 5-76 sets forth titles I through X adopted by the Council of the District of Columbia

entitled "The District of Columbia Comprehensive Plan of 1984," and was reprinted in its entirety in 31 DCR 1049 and is contained in the 10 DCMR compilation. On April 5, 1984, the National Capital Planning Commission adopted a resolution finding that "the District elements adopted and amended by the Council by D.C. Act 5-112 do not have a negative impact on the interests or functions of the Federal Establishment in the National Capital."

Section 2 of D.C. Law 8-129, as amended by § 201 of D.C. Law 8-132, amended Titles I through VIII, X and XI, and added Title XII to the District of Columbia Comprehensive Plan of 1984, adopted by D.C. Law 5-76. D.C. Law 8-129 was reprinted in its entirety in 37 DCR 55. Amended Titles I through VII, X, XI, and new Title XII will be codified at Title 10 of the District of Columbia Municipal Regulations. D.C. Law 8-132 is found at 38 DCR 2213.

Review of District elements by National Capital Planning Commission: Section 8(b) of D.C. Law 5-76, and § 4(b) of D.C. Law 8-129, provided that no District element of the Comprehensive Plan for the National Capital shall take effect until it has been reviewed by the National Capital Planning Commission as provided in subsection (a) of §§ 1-2002 and 1-244.

Progress report on Comprehensive Plan findings: Pursuant to Resolution 8-243, the "Progress Report on the Comprehensive Plan Findings Resolution of 1990", effective August 10, 1990, the Council submitted to the Mayor the findings of the Council on the Mayor's 3rd biennial progress report on implementing the District of Columbia elements of the Comprehensive Plan.

Comments on Zoning Commission's proposed Downtown Development District action: Pursu-

ant to Resolution 8-318, the "Zoning Commission Downtown Development District Comments Resolution of 1990", effective December 21, 1990, the Council expressed the opinion of the Council to the District of Columbia Zoning Commission concerning the Commission's proposed action on the Downtown Development District.

Repeal of § 2 of D.C. Law 5-187: Section 3(a) of D.C. Law 12-275 provided that § 2 of D.C. Law 5-187 is repealed, effective April 27, 1999. Section 2 of D.C. Law 5-187 had added a new title XI to the District of Columbia Comprehensive Plan of 1984, adopted by D.C. Law 5-76.

Sections 301 and 401 of D.C. Law 18-361 provided: "Sec. 301. Notwithstanding section 502, section 308(b) of the District of Columbia Administrative Procedure Act, effective March 6, 1979 (D.C. Law 2-153; D.C. Official Code § 2-558(b)), and section 204 of the District of Columbia Administrative Procedure Act of 1975, October 8, 1975 (D.C. Law 1-19; D.C. Official Code § 2-602), the text, maps, and graphics of the District elements of the Comprehensive Plan for the National Capital, as amended by this act, need not be published in the District of Columbia Register to become effective." Sec. 401. Applicability. "No District element of the Comprehensive Plan for the National Capital shall apply until it has been reviewed by the National Capital Planning Commission as provided in section 2(a) of the National Capital Planning Act of 1952, approved June 6, 1924 (43 Stat. 463; D.C. Official Code § 2-1002(a)), and section 423 of the District of Columbia Home Rule Act, approved 24, 1973 (87 Stat. 792; D.C. Official Code § 1-204.23)."

CASE NOTES

Zoning regulations, generally.

Estopping municipality from enforcing zoning laws must be, at best, rare exception, not rule. *Rafferty v. District of Columbia Zoning Comm'n*, 583 A.2d 169, 1990 D.C. App. LEXIS 287 (1990).

Neither District of Columbia Self Government Act nor District of Columbia Comprehensive Plan Act of 1984 imposed moratorium on private real estate development permitted as a

matter of right under applicable zoning regulations, even if regulations may have been inconsistent with District's comprehensive plan. *D.C. Code 1981, §§ 1-201 et seq., 1-245 et seq. Tenley & Cleveland Park Emergency Committee v. District of Columbia Bd. of Zoning Adjustment*, 550 A.2d 331, 1988 D.C. App. LEXIS 206 (1988), writ of certiorari denied by 489 U.S. 1082, 109 S. Ct. 1539, 103 L. Ed. 2d 843, 1989 U.S. LEXIS 1460, 57 U.S.L.W. 3620 (1989).

§ 1-306.02. Mayor to submit proposed Land Use Element and map; submission of amendments to District elements of comprehensive plan; specifications; approval.

(a) The Mayor of the District of Columbia shall transmit to the Council of the District of Columbia, on or before the date of the 1st regularly scheduled

legislative session in September 1984, a proposed District Land Use Element for inclusion in the Comprehensive Plan for the National Capital and a generalized land use map or a series of maps, which includes a generalized land use map, representing the land use policies set forth in the proposed Land Use Element. At the time of the submission to the Council of the District of Columbia of the proposed Land Use Element and the generalized land use map representing the land use policies set forth in that element, proposed amendments to the rest of this part shall be submitted to the Council of the District of Columbia to conform the language in this part to ensure consistency with the Land Use Element and with the generalized land use map.

(b) The Mayor shall transmit 4 generalized land use maps to the Council within 90 days of May 23, 1990. The maps transmitted under this subsection shall conform to the requirements of sections 1136(a) through (h) of title 11 of § 3 of this part ("Land Use Element of the Comprehensive Plan"), be printed at a scale of 1,200 feet to 1 inch, use standardized colors for planning maps, and include a street grid and other minor changes in format or design intended to improve the readability or understanding of the adopted policies. The Council shall hold a public hearing to determine if the maps transmitted under this subsection conform to the maps adopted under sections 1136(a) through (h) of the Land Use Element of the Comprehensive Plan. If the Council determines that a map transmitted under this subsection conforms to a map adopted under sections 1136(a) through (h) of the Land Use Element of the Comprehensive Plan, the Council shall approve the map by resolution.

(c) The Mayor shall transmit 2 generalized land use maps to the Council within 180 days of April 27, 1999. The maps transmitted under this section shall conform to the requirements of § 1139 of Chapter 11 ("the Land Use Element") of the Comprehensive Plan, be printed at a scale of 1,200 feet to 1 inch, use standardized colors for planning maps, indicate generalized land use policies, and include a street grid and other changes in format or design to improve the readability and understanding of the adopted policies. The Council shall hold a public hearing to determine if the maps transmitted under this section conform to the maps adopted under § 1139 of the Land Use Element of the Comprehensive Plan. If the Council determines that a map transmitted under this section conforms to a map adopted under § 1139 of the Land Use Element of the Comprehensive Plan, the Council shall approve the map by resolution. If the Council determines that a map transmitted under this section requires corrections to conform with a map adopted under § 1139 of the Land Use Element of the Comprehensive Plan, the Council shall approve the map by resolution, with conditions identifying the required corrections, and the Mayor shall publish a new map with the required corrections.

(d)(1) The Mayor shall transmit 2 generalized maps — a Future Land Use Map and a Generalized Policy Map — to the Council within 90 days after March 8, 2007.

(2) The maps transmitted under this section shall:

(A) Conform to the requirements of §§ 223 and 224 of Chapter 200 ("the Framework Element") of the Comprehensive Plan;

(B) Be printed at a scale of 1,500 feet to 1 inch;

(C) Use standardized colors for planning maps;

(D) Indicate generalized land use policies; and

(E) Include a street grid and other changes in format or design to improve the readability and understanding of the adopted policies.

(3)(A) The Council shall hold a public hearing to determine if the maps transmitted under this section conform to the maps adopted under §§ 223 and 224 of the Framework Element of the Comprehensive Plan, as required by paragraph 2 of this subsection. If the Council determines that a map transmitted under this section conforms as required, the Council shall approve the map by resolution.

(B) If the Council determines that a map transmitted under this section does not conform as required by paragraph 2 of this section but requires corrections to conform, the Council shall approve the map by resolution, identifying the required corrections, and the Mayor shall publish a new map with the required corrections.

(e)(1) The Mayor shall transmit 2 generalized maps — a Future Land Use Map and a Generalized Policy Map — to the Council within 90 days of April 8, 2011.

(2) The maps transmitted under this section shall:

(A) Incorporate the map amendments enacted in § 101(u) and (v) of D.C. Law 18-361; [58 D.C. Reg 908; 209 D.C. Act 711];

(B) Conform to the requirements of sections 223 through 226 of Chapter 200 (“the Framework Element”) of the Comprehensive Plan;

(C) Be printed at a scale of 1,500 feet to 1 inch;

(D) Use standardized colors for planning maps;

(E) Indicate generalized land use policies; and

(F) Include a street grid and any changes in format or design to improve the readability and understanding of the adopted policies.

(3)(A) The Council shall hold a public hearing to determine if the maps transmitted under this section conform to the requirements of paragraph 2 of this subsection. If the Council determines that a map transmitted under this section conforms as required, the Council shall approve the map by resolution.

(B) If the Council determines that a map transmitted under this section does not conform to the requirements of paragraph 2 of this section but requires corrections to conform, the Council shall approve the map by resolution, identifying the required corrections, and the Mayor shall publish a new map with the required corrections.

(Apr. 10, 1984, D.C. Law 5-76, § 7, 31 DCR 1049; May 23, 1990, D.C. Law 8-129, § 3(a)(1), 37 DCR 55; Oct. 6, 1994, D.C. Law 10-193, § 3(a)(1), 41 DCR 5536; Mar. 21, 1995, D.C. Law 10-235, § 4(a), 42 DCR 30; Apr. 9, 1997, D.C. Law 11-255, § 3, 44 DCR 1271; Apr. 27, 1999, D.C. Law 12-275, § 2(b), 46 DCR 1441; Mar. 8, 2007, D.C. Law 16-300, § 2(b), 54 DCR 924; Apr. 8, 2011, D.C. Law 18-361, § 201(a), 58 DCR 908.)

Cross references. — Generalized land use maps, District property, see § 10-807.

National capital planning commission, see § 2-1002.

Sale of public lands, property to be used consistent with the generalized land use maps, see § 10-801.

Prior Codifications. — 2001 Ed., § 1-301.63.

1981 Ed., § 1-246.

Effect of amendments. — D.C. Law 16-300 added subsec. (d).

D.C. Law 18-361 added subsec. (e).

Legislative history of Law 5-76. — For legislative history of D.C. Law 5-76, see Historical and Statutory Notes following § 1-306.01.

Legislative history of Law 8-129. — For legislative history of D.C. Law 8-129, see Historical and Statutory Notes following § 1-306.04.

Legislative history of Law 10-193. — Law 10-193, the “Comprehensive Plan Amendments Act of 1994,” was introduced in Council and assigned Bill No. 10-212, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 7, 1994, and June 21, 1994, respectively. Signed by the Mayor on August 8, 1994, it was assigned Act No. 10-323 and transmitted to both Houses of Congress for its review. D.C. Law 10-193 became effective on October 6, 1994.

Legislative history of Law 10-235. — Law 10-235, the “District of Columbia Comprehensive Plan Act of 1984 Land Use Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-689, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 27, 1994, it was assigned Act No. 10-378 and transmitted to both Houses of Congress for its review. D.C. Law 10-235 became effective on March 21, 1995.

Legislative history of Law 11-255. — Law 11-255, the “Second Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Legislative history of Law 12-275. — Law 12-275, the “Comprehensive Plan Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-99. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-609 and transmitted to both Houses of Congress for its review. D.C. Law 12-275 became effective on April 27, 1999.

Legislative history of Law 16-300. — Law 16-300, the “Comprehensive Plan Amendment

Act of 2006”, was introduced in Council and assigned Bill No. 16-876, which was referred to Committee on the Whole. The Bill was adopted on first and second readings on December 5, 2006, and December 19, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-637 and transmitted to both Houses of Congress for its review. D.C. Law 16-300 became effective on March 8, 2007.

Legislative history of Law 18-361. — Law 18-361, the “Comprehensive Plan Amendment Act of 2010”, was introduced in Council and assigned Bill No. 18-867, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 9, 2010, and November 23, 2010 and January 4, 2011, respectively. Signed by the Mayor on January 20, 2011, it was assigned Act No. 18-711 and transmitted to both Houses of Congress for its review. D.C. Law 18-361 became effective on April 8, 2011.

Effective date. — Section 4(b) of D.C. Law 10-193 provided that no District element of the Comprehensive Plan for the National Capital shall take effect until it has been reviewed by the National Capital Planning Commission as provided in § 2-1002(a) and § 1-204.23.

References in text. — The “Land Use Element of the Comprehensive Plan”, referred to throughout (b) and (c), is codified at 10 DCMR Ch. 11.

The generalized land use maps of the Land Use Element of the Comprehensive Plan are codified at 10 DCMR 1135.

Resolutions. — Resolution 14-112, the “Comprehensive Plan Land Use Maps Approval Resolution of 2001”, was approved effective June 5, 2001.

Resolution 15-614, the “Vision and Policy Framework for the Comprehensive Plan Update Sense of the Council Resolution of 2004”, was approved effective July 13, 2004.

Editor’s notes. — District of Columbia Comprehensive Plan of 1984: Section 3 of D.C. Law 5-76 sets forth titles I through X adopted by the Council of the District of Columbia entitled “The District of Columbia Comprehensive Plan of 1984,” and was reprinted in its entirety in 31 DCR 1049 and is contained in the 10 DCMR compilation. On April 5, 1984, the National Capital Planning Commission adopted a resolution finding that “the District elements adopted and amended by the Council by D.C. Act 5-112 do not have a negative impact on the interests or functions of the Federal Establishment in the National Capital”.

Council’s conditional approval of 4 revised land use maps: Pursuant to Resolution 6-263, the “Comprehensive Plan Land Use Maps Approval Resolution of 1985,” effective July 9, 1985, the Council approved 4 revised land use maps transmitted by the Mayor pursuant to § 1136(i) of the District of Columbia Compre-

hensive Plan Act of 1984 Land Use Element Amendment Act of 1984 (D.C. Law 5-187) on the condition that certain specified changes be made.

Comprehensive Plan Land Use Maps Approval Resolution of 1992: Pursuant to Resolution 9-275, effective July 31, 1992, the Council approved the 4 proposed land use maps, dated November 1990, transmitted by the Mayor pursuant to the District of Columbia Comprehensive Plan Amendments Act of 1989.

Repeal of § 2 of D.C. Law 5-187: Section 3(a) of D.C. Law 12-275 provided that § 2 of D.C. Law 5-187 is repealed, effective April 27, 1999. Section 2 of D.C. Law 5-187 had added a new

title XI to the District of Columbia Comprehensive Plan of 1984, adopted by D.C. Law 5-76.

District of Columbia Comprehensive Plan of 1984: Section 2 of D.C. Law 10-193 amended D.C. Law 5-76. The text of D.C. Law 10-193 is found at 41 DCR 5536.

Comprehensive Plan Land Use Maps Approval Resolution of 1996: Pursuant to Resolution 11-313, effective May 7, 1996, Council approved the two new and updated District of Columbia generalized land use maps transmitted by the Mayor pursuant to the District of Columbia Comprehensive Plan Amendments Act of 1994.

CASE NOTES

ANALYSIS

Administrative findings.
Enforcement of zoning regulations.
Judicial review.
Prejudice.

Administrative findings.

Zoning commission was required to make findings with respect to equitable issues of estoppel and laches as well as property owner's claim regarding deficiencies in procedures of advisory neighborhood commission in opposing property owner's application to modify architectural plans of previously approved planned unit development in order for Court of Appeals to review zoning commission's decision denying application, where issues of estoppel, laches and procedural defects were raised before zoning commission by parties and on commission's own initiative. D.C. Code 1981, § 1-1509(e). *Rafferty v. District of Columbia Zoning Comm'n*, 583 A.2d 169, 1990 D.C. App. LEXIS 287 (1990).

Enforcement of zoning regulations.

Estopping municipality from enforcing zon-

ing laws must be, at best, rare exception, not rule. *Rafferty v. District of Columbia Zoning Comm'n*, 583 A.2d 169, 1990 D.C. App. LEXIS 287 (1990).

Judicial review.

Except in unusual cases, Court of Appeals will not second-guess credibility determinations by agency; credibility is to be determined by finder of fact, who is not confined to cold paper record but has opportunity to observe the demeanor of witnesses. *Rafferty v. District of Columbia Zoning Comm'n*, 583 A.2d 169, 1990 D.C. App. LEXIS 287 (1990).

Prejudice.

Any prejudice to which property owners might have been subject as result of belated filing of report of office of planning regarding property owner's application for modifications in architectural plans of previously approved planned unit development was dissipated by continuance of date of original hearing subsequent to filing of report. *Rafferty v. District of Columbia Zoning Comm'n*, 583 A.2d 169, 1990 D.C. App. LEXIS 287 (1990).

§ 1-306.03. Mayor to propose ward plans; updated plans; public hearing; transmission to Council for adoption.

(a) Repealed.

(b) Repealed.

(c)(1) The Mayor shall prepare proposed small area action plans for selected geographical areas that require more specific land use analysis to incorporate the broadest range of planning techniques and solutions practical to achieve the District's goals and objectives. The proposed small area action plans may include specific zoning recommendations, capital improvements requirements, financing strategies, special tax, design, or other regulatory recommendations,

and implementation techniques necessary for the realization of objectives and policies of the Comprehensive Plan.

(2) The Mayor shall make copies of each proposed small area action plan available to each affected Advisory Neighborhood Commission and make ample copies of each proposed small area plan available to the Council and the public. Each proposed small area action plan shall include small area maps that depict land use policies at the small area level that are not inconsistent with the adopted generalized District-wide land use maps or approved ward plans.

(3) The Mayor shall hold a public hearing on each proposed small area action plan in the appropriate area, not less than 30 days after the publication of the proposed small area action plan and not more than 90 days after the publication of the proposed small area action plan.

(4) Not more than 60 days after the completion of the public hearing required by this subsection, the Mayor shall transmit the revised small area action plan to the Council, with a proposed resolution, for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. The transmission shall include copies of the Mayor's public hearing records, and an executive summary that identifies the differences, and the rationale for the differences, between the revised small area action plan and the proposed small area action plan that had been the subject of a public hearing. If the Council does not approve or disapprove the revised small area action plan, in whole or in part, by resolution within this 45-day review period, the revised small area plan shall be deemed approved. Once approved, the small area action plan shall provide supplemental guidance to the Zoning Commission and other District agencies in carrying out the policies of the Comprehensive Plan.

(5) Small area action plans shall be prepared for selected geographical areas, including, but not limited to, the following areas:

(A) Each of the special treatment areas, housing opportunity areas, and development opportunity areas that are designated on the enacted District-wide generalized land use maps to implement the policies established for these areas in the Land Use Element of the Comprehensive Plan;

(B) The Mount Pleasant area, after studying the following proposed policies for this area:

(i) Support creative and multicultural expression through displays, performances, and festivals;

(ii) Maintain and enhance the character of the neighborhood by encouraging creative cultural design (including special-merit design) while protecting historical landmarks;

(iii) Promote additional low-income and moderate-income housing;

(iv) Encourage small-business incubators and plazas for licensed market vendors in order to increase business opportunities for residents; and

(v) Support low-impact mixed-use of residential space for multicultural arts, crafts, and other professional and consulting services;

(C) The Southwest Urban Renewal Area and other urban renewal areas to ensure that appropriate zoning plans for these areas continue to be

developed in consultation with affected citizens, which shall be implemented in phases immediately upon the termination of the various sections of the urban renewal plans; and

(D) The Capitol Hill business district, the Eastern Market metroraill station area, and the Potomac Avenue metroraill station area, to implement policies for these areas set forth in the Ward 6 Plan.

(Mar. 16, 1985, D.C. Law 5-187, § 4, 32 DCR 873; May 23, 1990, D.C. Law 8-129, § 3(b)(1), 37 DCR 55; Oct. 6, 1994, D.C. Law 10-193, § 3(b)(1), 41 DCR 5536; Apr. 18, 1996, D.C. Law 11-110, § 2(b), 43 DCR 530; Apr. 27, 1999, D.C. Law 12-275, § 3(a), (b), 46 DCR 1441; Apr. 12, 2000, D.C. Law 13-91, § 101, 47 DCR 520.)

Cross references. — National capital planning commission, see § 2-1002.

Prior Codifications. — 2001 Ed., § 1-301.64.

1981 Ed., § 1-247.

Effect of amendments. — D.C. Law 13-91, in the first sentence of subsec. (c)(1), substituted “shall” for “may”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2 of Extension of Review Period for the Rhode Island Avenue Small Area Action Plan Emergency Amendment Act of 2011 (D.C. Act 19-15, February 15, 2011, 58 DCR 1532).

Legislative history of Law 5-187. — Law 5-187, the “District of Columbia Comprehensive Plan Act of 1984 Land Use Element Amendment Act of 1984,” was introduced in Council and assigned Bill No. 5-507, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 4, 1984 and December 18, 1984, respectively. Signed by the Mayor on January 11, 1985, it was assigned Act No. 5-252 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-129. — For legislative history of D.C. Law 8-129, see Historical and Statutory Notes following § 1-306.04.

Legislative history of Law 10-193. — For legislative history of D.C. Law 10-193, see Historical and Statutory Notes following § 1-306.02.

Legislative history of Law 11-110. — Law 11-110, the “Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

Legislative history of Law 12-275. — Law 12-275, the “Comprehensive Plan Amendment

Act of 1998,” was introduced in Council and assigned Bill No. 12-99. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-609 and transmitted to both Houses of Congress for its review. D.C. Law 12-275 became effective on April 27, 1999.

Legislative history of Law 13-91. — Law 13-91, the “Technical Amendments Act of 1999,” was introduced in Council and assigned Bill No. 13-435, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 2, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000.

Effective date. — For effective date of District elements of Comprehensive Plan for the National Capital, see Historical and Statutory Notes following § 1-306.02.

Resolutions. — Resolution 14-460, the “Takoma Central District Plan Approval Resolution of 2002,” was approved effective June 21, 2002.

Resolution 15-244, the “Southwest Waterfront Plan Approval Resolution of 2003,” was approved effective October 7, 2003.

Resolution 15-460, the “H Street NE Strategic Development Plan Approval Resolution of 2004,” was approved effective February 17, 2004.

Resolution 16-685, the “Anacostia Transit Area Strategic Investment and Development Plan Approval Resolution of 2006,” was approved effective July 20, 2006.

Resolution 16-686, the “Georgia Avenue-Petworth Metro Station Area and Corridor Plan Approval Resolution of 2006,” was approved effective July 20, 2006.

Resolution 16-687, the “Convention Center Area Strategic Development Plan Approval Resolution of 2006,” was approved effective July 20, 2006.

Resolution 16-922, the “Barry Farm/Park Chester Nade Road Redevelopment Plan Approval Resolution of 2006”, was approved effective December 19, 2006.

Resolution 16-923, the “Lincoln Heights Richardson Dwellings New Communities Initiative Revitalization Plan Approval Resolution of 2006”, was approved effective December 19, 2006.

Resolution 17-538, the “Park Morton Redevelopment Initiative Plan Approval Resolution of 2008”, was approved effective February 19, 2008.

Resolution 18-336, the “Chinatown Cultural Development Small Area Action Plan Approval Resolution of 2009”, was approved effective December 15, 2009.

Resolution 18-424, the “Bellevue Small Area Action Plan Approval Resolution of 2010”, was approved effective March 16, 2010.

Resolution 18-679, the “Mount Pleasant Street Small Area Action Plan Approval Resolution of 2010”, was approved effective December 7, 2010.

Resolution 19-96, the “Rhode Island Avenue Small Area Action Plan Approval Resolution of 2011”, was approved effective May 3, 2011.

Editor’s notes. — Extension of statutory deadline for preparation of draft ward plans: Pursuant to Resolution 6-580, the “Draft Ward Plans Emergency Declaration Resolution of 1986,” effective March 11, 1986, the Council determined that emergency circumstances made it necessary that the Draft Ward Plans Emergency Amendment Act of 1986 be adopted after a single reading to extend by 3 months the statutory deadline by which the Mayor is required to prepare draft ward plans.

§ 1-306.04. Preserving and ensuring community input.

(a) Continuous community input into every phase of development of titles I through XII of section 3 (the “Comprehensive Plan”), from conception to adoption to implementation, is essential to assure that the Comprehensive Plan in all its elements is the valid expression of District residents, property owners, commercial interests, and other groups and individuals in the District. A variety of means to secure community input should be utilized, including advisory and technical committees, community workshops, review of draft texts, public forums and hearings, and other means of discussion and communication. The District government, through its executive and legislative branches, will strive to ensure that the Comprehensive Plan, in all its elements, is both responsive and responsible.

(b) Community input into the implementation of the District elements of the Comprehensive Plan will be assured by the requirement of a periodic review. Not less frequently than once every 4 years, beginning March 31, 2000, the Mayor shall submit to the Council a report, accompanied by a proposed resolution, on the progress made by the government of the District of Columbia in implementing the District elements of the Comprehensive Plan. The Council shall schedule a public hearing on the progress report and, following each review period, submit to the Mayor the findings of the Council and a copy of the public testimony on the progress report.

(c) Each progress report shall indicate the progress made in implementing Comprehensive Plan Actions during the reporting period and the key projected implementation activities by land use policy for the next 5 years.

(d) The Mayor shall submit periodically to the Council for its consideration proposed amendments to the Comprehensive Plan. Such amendments shall be submitted not less frequently than once every 4 years, beginning March 31, 2002, and shall be accompanied by an environmental assessment of the proposed amendments. Proposed amendments may also be submitted by the Mayor to the Council at any other time that the Mayor determines to be necessary.

(e) The process for executive branch consideration of proposed amendments to the Comprehensive Plan initiated by District agencies or the public shall include:

- (1) Standards for appropriateness;
- (2) A format and deadline for submission of amendments;
- (3) Public meetings to be held by the executive;
- (4) A mechanism for public review of all proposed amendment submissions;
- (5) A mechanism for public review of the Mayor's proposed amendments; and
- (6) Submission by the Mayor to the Council of proposed amendments to the Comprehensive Plan.

(Apr. 10, 1984, D.C. Law 5-76, § 8 9, as added May 23, 1990, D.C. Law 8-129, § 3(a)(2), 37 DCR 55; Oct. 6, 1994, D.C. Law 10-193, § 3(a)(2), 41 DCR 5536; Apr. 27, 1999, D.C. Law 12-275, § 2(c), 46 DCR 1441; Mar. 8, 2007, D.C. Law 16-300, § 2(c), 54 DCR 924.)

Prior Codifications. — 2001 Ed., § 1-301.65.

1981 Ed., § 1-248.

Effect of amendments. — D.C. Law 16-300 rewrote subsec. (c) which had read as follows: “(c) Each progress report shall indicate the progress made in implementing the Land Use Element of the Comprehensive Plan by land use policy during the reporting period and the key projected implementation activities by land use policy for the next five years.”

Legislative history of Law 8-129. — Law 8-129 was introduced in Council and assigned Bill No. 8-2, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on October 10, 1989, and October 24, 1989, respectively. Signed by the Mayor on December 21, 1989, it was assigned Act No. 8-138 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-193. — For legislative history of D.C. Law 10-193, see Historical and Statutory Notes following § 1-306.02.

Legislative history of Law 12-275. — For legislative history of D.C. Law 12-275, see Historical and Statutory Notes following § 1-306.02.

Legislative history of Law 16-300. — For Law 16-300, see notes following § 1-306.02.

Effective date. — For effective date of District elements of Comprehensive Plan for the National Capital, see Historical and Statutory Notes following § 1-306.02.

References in text. — “Titles I through XII of section 3 (the ‘Comprehensive Plan’)” referred to in the first sentence of (a), refers to § 3 of D.C. Law 5-76.

Resolutions. — Resolution 15-558, the “Progress Report on Implementing the Comprehensive Plan Findings Resolution of 2004”, was approved effective June 1, 2004.

Editor's notes. — Pursuant to Resolution 9-267, effective July 10, 1992, the Council resolved to submit to the Mayor the findings of the Council on the Mayor's 4th biennial progress report on implementing the District of Columbia Elements of the Comprehensive Plan.

§ 1-306.05. Publication of the Comprehensive Plan.

(a) Within 90 days of March 8, 2007, the Mayor shall publish the Comprehensive Plan, as amended, in its entirety.

(b) The Comprehensive Plan shall be consolidated by the District of Columbia Office of Documents into a single new or replacement title of the District of Columbia Municipal Regulations to be designated by the District of Columbia Office of Documents. The Comprehensive Plan shall be published in the format furnished by the Mayor and need not conform to the Office of Documents' publication standards.

(c) Within 90 days of April 8, 2011, the Mayor shall publish the Compre-

hensive Plan, as amended, in its entirety. The Comprehensive Plan shall be consolidated by the District of Columbia Office of Documents into a single new or replacement title of the District of Columbia Municipal Regulations to be designated by the District of Columbia Office of Documents. The Comprehensive Plan shall be published in the format furnished by the Mayor and need not conform to the Office of Documents' publication standards.

(Apr. 10, 1984, D.C. Law 5-76, § 9a, as added Oct. 6, 1994, D.C. Law 10-193, § 3(a)(3), 41 DCR 5536; Apr. 27, 1999, D.C. Law 12-275, § 2(d), 46 DCR 1441; Mar. 8, 2007, D.C. Law 16-300, § 2(d), 54 DCR 924; Apr. 8, 2011, D.C. Law 18-361, § 201(b), 58 DCR 908.)

Prior Codifications. — 2001 Ed., § 1-301.66.

1981 Ed., § 1-248.1.

Effect of amendments. — D.C. Law 16-300 rewrote subsecs. (a) and (b).

D.C. Law 18-361 added subsec. (c).

Legislative history of Law 10-193. — For legislative history of D.C. Law 10-193, see Historical and Statutory Notes following § 1-306.02.

Legislative history of Law 12-275. — For legislative history of D.C. Law 12-275, see His-

torical and Statutory Notes following § 1-306.02.

Legislative history of Law 16-300. — For Law 16-300, see notes following § 1-306.02.

Legislative history of Law 18-361. — For history of Law 18-361, see notes under § 1-306.02.

Effective date. — For effective date of District elements of Comprehensive Plan for the National Capital, see Historical and Statutory Notes following § 1-306.02.

§ 1-306.06. Review of building, construction, or public space permits.

(a) The Mayor shall, in the course of the interagency review of a development project that is subject to the Large Tract Review Procedures of the Office of Planning (10 DCMR § 2300 et seq.), consider whether the issuance of a building or construction permit is inconsistent with the Land Use Element of the Comprehensive Plan. If the Mayor finds that the issuance of a permit is inconsistent with the Land Use Element of the Comprehensive Plan, but consistent with zoning, the Mayor shall defer issuance of the permit, and within 60 days, propose amendments to the zoning regulations or maps to eliminate the inconsistency of the zoning regulations with the Land Use Element of the Comprehensive Plan. Nothing in this subsection shall be construed to permit the issuance of a building or construction permit that is inconsistent with zoning. The government issuance of public space permits shall also not be inconsistent with the Comprehensive Plan.

(b) If the Mayor finds that the issuance of any building or construction permit, which is not subject to subsection (a) of this section solely because of insufficient commercial square footage, would be inconsistent with the Land Use Element of the Plan, but consistent with zoning, the Mayor may defer the decision to issue the requested permit and, if he defers he shall propose, within 60 days, amendments to the zoning regulations or maps to eliminate any inconsistency of the zoning regulations with the Land Use Element of the Plan. This subsection shall apply only to the construction of new commercial buildings that are not low density commercial buildings.

(c) When a major new building proposed for a college or university campus, and included in its campus plan, is instead moved off campus, the college or

university must submit the plans for the review and approval of the Board of Zoning Adjustment as a specific amendment to its campus plan, limited to review of the change affecting that specific site, before the college or university may substitute another major new building for that campus plan site. For purposes of this subsection, a major new building is defined as one specifically identified in the campus plan. Further, in order for the community to know as quickly as possible the substitute plans for the site, the review and approval of the new plans are to be done on an expedited basis. If the campus plan site is to remain vacant, or if the existing uses on that site are to remain, then the college or university is required to provide each affected Advisory Neighborhood Commission with written notice of that decision within 30 days of the college's or university's decision for movement. In such event, no further review by the Board of Zoning and Adjustment is required.

(Mar. 16, 1985, D.C. Law 5-187, § 6, as added May 23, 1990, D.C. Law 8-129, § 3(b)(3), 37 DCR 55; Oct. 6, 1994, D.C. Law 10-193, § 3(b)(2), 41 DCR 5536; Mar. 21, 1995, D.C. Law 10-235, § 2, 42 DCR 30.)

Section references. — This section is referred to in § 47-813.

Prior Codifications. — 2001 Ed., § 1-301.67.

1981 Ed., § 1-249.

Legislative history of Law 8-129. — For legislative history of D.C. Law 8-129, see Historical and Statutory Notes following § 1-306.04.

Legislative history of Law 10-193. — For legislative history of D.C. Law 10-193, see His-

torical and Statutory Notes following § 1-306.02.

Legislative history of Law 10-235. — For legislative history of D.C. Law 10-235, see Historical and Statutory Notes following § 1-306.02.

Effective date. — For effective date of District elements of Comprehensive Plan for the National Capital, see Historical and Statutory Notes following § 1-306.02.

§ 1-306.07. Zoning conformity.

(a)(1) Except as provided in paragraphs (2), (3), and (4) of this subsection, the government shall be subject to zoning.

(2) Any governmental land uses that were either existent or substantially planned, documented, and invested in prior to May 23, 1990, shall not be subject to zoning.

(3) The use of government-owned property on Lot 276 in Square 1282, which is located at 3050 R Street, N.W., as a residential treatment and special education facility for not more than 24 emotionally disturbed children, ages 6 to 12 years, and as a treatment and special education facility for not more than 15 emotionally disturbed children, ages 6-12, who do not reside at the facility, shall not be subject to zoning.

(4) The government's use of property on the former site of the United States Naval Air Station communications facility located in the northeast corner of the east campus of Saint Elizabeths Hospital as a facility to send and receive 911 or other governmental emergency communications shall not be subject to zoning. Any governmental use of this property for other purposes or any non-governmental use of this property shall be subject to zoning or review and approval by the Council.

(b) The Mayor shall within 16 months of April 8, 2011, propose amendments

to the zoning regulations or maps to eliminate any inconsistency of the zoning regulations with the Land Use Element of the Comprehensive Plan.

(Mar. 16, 1985, D.C. Law 5-187, § 7, as added May 23, 1990, D.C. Law 8-129, § 3(b)(3), 37 DCR 55; Oct. 6, 1994, D.C. Law 10-193, § 3(b)(3), 41 DCR 5536; Mar. 21, 1995, D.C. Law 10-235, §§ 2(l), 4(b), 42 DCR 30; Apr. 27, 1999, D.C. Law 12-275, § 3(c), 46 DCR 1441; Mar. 8, 2007, D.C. Law 16-300, § 4, 54 DCR 924; Oct. 18, 2007, D.C. Law 17-23, § 2, 54 DCR 8009; Mar. 25, 2009, D.C. Law 17-353, § 171, 56 DCR 1117; Apr. 8, 2011, D.C. Law 18-361, § 202, 58 DCR 908.)

Section references. — This section is referred to in § 47-813.

Prior Codifications. — 2001 Ed., § 1-301.68.

1981 Ed., § 1-250.

Effect of amendments. — D.C. Law 16-300, in subsec. (b), substituted “March 8, 2007” for “April 27, 1999”.

D.C. Law 17-23, in subsec. (a)(1), substituted “(4), and (5)” for “and (4)”; and added subsec. (a)(5), which read as follows: “(5) The government’s use of the parking structures that will provide approximately 1,325 parking spaces on areas commonly known as ‘parcel A’ (adjacent to South Capitol Street and N Street, S.E.), ‘parcel B’ (adjacent to N Street and First Street, S.E.), and ‘parcel C’ (adjacent to Potomac Avenue and South Capitol Street, S.E.) within the ballpark site, as defined under § 10-1601.05(a)(2), or ballpark, as defined under § 47-2002.05(a)(1)(A), shall not be subject to zoning.”

The amendments to this section made by D.C. Law 17-23 expired on December 31, 2008, pursuant to section 3 of D.C. Law 17-23.

D.C. Law 17-353 validated a previously made technical correction in subsec. (b).

D.C. Law 18-361, in subsec. (b), substituted “April 8, 2011” for “March 8, 2007”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Comprehensive Plan Land Use Antenna Exemption Temporary Amendment Act of 1998 (D.C. Law 12-218, April 13, 1999, law notification 46 DCR 3840).

Section 2 of D.C. Law 16-251, in subsec. (a), in par. (1), substituted “(4), and (5)” for “and (4)”, and added par. (5) to read as follows: “(5) The government’s use of the parking structures that will provide approximately 1,225 parking spaces on areas commonly known as ‘parcel A’ (adjacent to South Capitol Street and N Street, S.E.), ‘parcel B’ (adjacent to N Street and First Street, S.E.), and ‘parcel C’ (adjacent to Potomac Avenue and South Capitol Street, S.E.) within the Ballpark Site, as defined under section 105(a)(2) of the Ballpark Omnibus Financing and Revenue Act of 2004, effective April 8, 2005 (D.C. Law 15-320; D.C. Official

Code § 10-1601.05(a)(2)), or Ballpark as defined under D.C. Official Code § 47-2002.05(a)(1)(A), shall not be subject to zoning.”

Section 3 of D.C. Law 16-251 provided: “This act shall expire on the earlier of the completion of the construction in 2006 through 2008 of the parking structures on the Ballpark Site or December 31, 2008.”

Section 4(b) of D.C. Law 16-251 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 2 of the Comprehensive Plan Land Use Antenna Exemption Emergency Amendment Act of 1998 (D.C. Act 12-514, December 9, 1998, 46 DCR 1).

For temporary (90-day) amendment of section, see § 2 of the Comprehensive Plan Land Use Georgetown Flea Market Exemption Emergency Amendment Act of 1999 (D.C. Act 13-253, January 27, 2000, 47 DCR 827).

For temporary (90 day) amendment of section, see § 2 of Ballpark Parking Completion Emergency Amendment Act of 2006 (D.C. Act 16-535, December 4, 2006, 53 DCR 9850).

Legislative history of Law 8-129. — For legislative history of D.C. Law 8-129, see Historical and Statutory Notes following § 1-306.04.

Legislative history of Law 10-190. — Law 10-190, the “District Government Land Use Temporary Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-688. The Bill was adopted on first and second readings on July 5, 1994, and July 19, 1994, respectively. Signed by the Mayor on August 4, 1994, it was assigned Act No. 10-316 and transmitted to both Houses of Congress for its review. D.C. Law 10-190 became effective on October 1, 1994.

Legislative history of Law 10-193. — For legislative history of D.C. Law 10-193, see Historical and Statutory Notes following § 1-306.02.

Legislative history of Law 10-235. — For legislative history of D.C. Law 10-235, see Historical and Statutory Notes following § 1-306.02.

Legislative history of Law 12-275. — For legislative history of D.C. Law 12-275, see Historical and Statutory Notes following § 1-306.02.

Legislative history of Law 16-300. — For Law 16-300, see notes following § 1-306.02.

Legislative history of Law 17-23. — Law 17-23, the “Ballpark Parking Completion Amendment Act of 2007”, was introduced in Council and assigned Bill No. 17-23 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 21, 2007, and July 10, 2007, respectively. Signed by the Mayor on July 25, 2007, it was assigned Act No. 17-85 and transmitted to both Houses of Congress for its review. D.C. Law 17-23 became effective on October 18, 2007.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 1-129.05.

Legislative history of Law 18-361. — For history of Law 18-361, see notes under § 1-306.02.

Effective date. — For effective date of District elements of Comprehensive Plan for the National Capital, see Historical and Statutory Notes following § 1-306.02.

Expiration of Law 17-23. — Section 3 of D.C. Law 17-23 provided:

Editor’s notes. — “This act shall expire on the earlier of the completion of the construction in 2006 through 2008 of the parking structures, including the issuance of a certificate of occupancy for such structures, on the Ballpark Site or December 31, 2008.”

CASE NOTES

ANALYSIS

Applicability of zoning laws.
Judicial review.

Applicability of zoning laws.

Under the Comprehensive Plan Amendments Act, in which the counsel for the District of Columbia declared that the government shall be subject to zoning, the District of Columbia government was no longer exempt from zoning laws applicable to private parties. D.C. Code 1981, § 1-250. *Speyer v. Barry*, 588 A.2d 1147, 1991 D.C. App. LEXIS 71 (1991).

Judicial review.

Factual findings by trial court were neces-

sary to determine whether the District of Columbia government acted reasonably and in good faith in proceeding with planned conversion of home for the blind into residential treatment center for emotionally disturbed juveniles so as to preclude application of the Comprehensive Plan Amendments Act, under which the District lost its previous exemption from zoning laws applicable to private parties, and whether subjecting District to zoning regulations would bring about major financial loss to the taxpayers or other serious private or public harm constituting manifest injustice. D.C. Code 1981, § 1-250. *Speyer v. Barry*, 588 A.2d 1147, 1991 D.C. App. LEXIS 71 (1991).

Part B

HOUSING LINKAGE REQUIREMENT OF THE HOUSING ELEMENT.

§ 1-306.31. Housing linkage objective.

The housing linkage objective is to require applicants who obtain bonus commercial office space as a result of a discretionary and otherwise appropriate street or alley closing or zoning density increase to produce housing or contribute funds to the production of housing, particularly housing that is affordable to low- and moderate-income households throughout the District, in an amount based on a formula tied to the amount or value of the additional commercial office square footage obtained.

(Apr. 10, 1984, D.C. Law 5-76, § 3, 31 DCR 1049; Apr. 27, 1999, D.C. Law 12-275, § 2(a), 41 DCR 1497.)

Legislative history of Law 5-76. — Law 5-76, the “District of Columbia Comprehensive Plan Act of 1984,” was introduced in Council and assigned Bill No. 5-282, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on January 17, 1984 and January 31, 1984, respectively. Signed by the Mayor on February 23, 1984, it was assigned Act No. 5-112 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-275. — Law 12-275, the “Comprehensive Plan Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-99. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-609 and transmitted to both Houses of Congress for its review. D.C. Law 12-275 became effective on April 27, 1999.

§ 1-306.32. Housing linkage purpose.

In establishing the housing linkage objective, the District sets forth the following purposes:

(1) To encourage the construction and rehabilitation of housing throughout the District of Columbia, particularly housing that is affordable to low- and moderate-income households;

(2) To reduce a shortage of affordable housing in the District which has been caused in part by increased demand for this housing from employees of new commercial development who compete with present residents for scarce, vacant affordable housing, and by high land values which raise the cost of housing and which are partly a function of the demand for additional commercial office space in the National Capital; and

(3) To increase the income tax base and labor force in the District by providing a mechanism to stimulate the development and expansion of housing for employees in the District who cannot afford to reside in the District.

(Apr. 10, 1984, D.C. Law 5-76, § 3, 31 DCR 1049; Apr. 27, 1999, D.C. Law 12-275, § 2(a), 41 DCR 1497.)

Legislative history of Law 5-76. — For Law 5-76, see notes following § 1-306.31.

Legislative history of Law 12-275. — For Law 12-275, see notes following § 1-306.31.

§ 1-306.33. Housing linkage policies — Requirements.

The policies established in support of the housing linkage objective are as follows:

(1) Except as provided in § 1-306.41, whenever the Council approves a discretionary and otherwise appropriate street or alley closing which results in the provision of additional commercial office space, or whenever the Zoning Commission approves a discretionary and otherwise appropriate zoning density increase which results in the provision of additional commercial office space, the applicant who obtains the additional commercial office space shall be required to comply with the following housing requirement:

(A) The applicant shall construct or rehabilitate housing that is affordable to low- and moderate- income households in the District, the minimum amount of which shall be calculated by the formula set forth in paragraph (2) of this section, which shall be dedicated to use for affordable housing for no

fewer than 20 years, and which shall be developed in accordance with the schedule set forth in § 1-306.43; or

(B) The applicant shall contribute funds, the minimum amount of which shall be calculated by the formula set forth in § 1-306.36, to a housing trust fund in accordance with the schedule set forth in § 1-306.34.

(2) Except as provided in § 1-306.34, if the applicant agrees to construct or rehabilitate the affordable housing, then the total square footage of the affordable housing that the applicant shall be required to construct or rehabilitate shall be as follows:

(A) Not less than $\frac{1}{4}$ of the total square footage of the additional commercial office space, if the required affordable housing is located on or adjacent to the site of the additional commercial office space;

(B) Not less than $\frac{1}{3}$ of the total square footage of the additional commercial office space, if the required affordable housing is located off or not adjacent to the site of the additional commercial office space, and if the housing is located within the advisory neighborhood commission area where the additional commercial office space is located or within an area designated on an enacted land use map of the Comprehensive Plan as a housing opportunity area; or

(C) Not less than $\frac{1}{2}$ of the total square footage of the additional commercial office space, if the required affordable housing is located in any other area of the District.

(Apr. 10, 1984, D.C. Law 5-76, § 3, 31 DCR 1049; Apr. 27, 1999, D.C. Law 12-275, § 2(a), 41 DCR 1497.)

Legislative history of Law 5-76. — For Law 5-76, see notes following § 1-306.31.

Legislative history of Law 12-275. — For Law 12-275, see notes following § 1-306.31.

§ 1-306.34. Required housing where existing housing is removed.

If the additional commercial office space is located on a development site that is improved with 1 or more housing units that are removed, either after the application or within 1 year prior to the application to facilitate the commercial development, the total square footage of the required affordable housing shall be not less than the total square footage of the removed housing plus the square footage of housing required by § 1-306.33(2).

(Apr. 10, 1984, D.C. Law 5-76, § 3, 31 DCR 1049; Apr. 27, 1999, D.C. Law 12-275, § 2(a), 41 DCR 1498.)

Legislative history of Law 5-76. — For Law 5-76, see notes following § 1-306.31.

Legislative history of Law 12-275. — For Law 12-275, see notes following § 1-306.31.

§ 1-306.35. Applicant's choice.

If the applicant agrees to construct or rehabilitate affordable housing pursuant to § 1-306.33(1), the applicant may satisfy this agreement in any manner chosen by the applicant, including but not limited to a joint venture,

partnership, contract, or arrangement with another party to develop the required housing.

(Apr. 10, 1984, D.C. Law 5-76, § 3, 31 DCR 1049; Apr. 27, 1999, D.C. Law 12-275, § 2(a), 41 DCR 1498.)

Legislative history of Law 5-76. — For Law 5-76, see notes following § 1-306.31.

Legislative history of Law 12-275. — For Law 12-275, see notes following § 1-306.31.

§ 1-306.36. Housing trust fund requirement.

Except as provided in § 1-306.37, if the applicant agrees to contribute funds to a housing trust fund, the amount of funds to be contributed shall be no less than the total of $\frac{1}{2}$ of the assessed value of the total square footage of additional commercial office space.

(Apr. 10, 1984, D.C. Law 5-76, § 3, 31 DCR 1049; Apr. 27, 1999, D.C. Law 12-275, § 2(a), 41 DCR 1498.)

Legislative history of Law 5-76. — For Law 5-76, see notes following § 1-306.31.

Legislative history of Law 12-275. — For Law 12-275, see notes following § 1-306.31.

§ 1-306.37. Housing trust fund requirement where existing housing removed.

If the applicant agrees to contribute funds to a housing trust fund, and if the additional commercial office space is located on a development site that is improved with 1 or more housing units that are removed, either after the application or within 1 year prior to the application to facilitate the commercial development, the amount of funds to be contributed shall be no less than the total of the assessed value of the housing units that are removed plus $\frac{1}{2}$ of the assessed value of the total square footage of additional commercial office space.

(Apr. 10, 1984, D.C. Law 5-76, § 3, 31 DCR 1049; Apr. 27, 1999, D.C. Law 12-275, § 2(a), 41 DCR 1499.)

Legislative history of Law 5-76. — For Law 5-76, see notes following § 1-306.31.

Legislative history of Law 12-275. — For Law 12-275, see notes following § 1-306.31.

§ 1-306.38. Zoning Commission powers.

Nothing in this part shall require the Zoning Commission to grant or deny an application for a zoning density increase.

(Apr. 10, 1984, D.C. Law 5-76, § 3, 31 DCR 1049; Apr. 27, 1999, D.C. Law 12-275, § 2(a), 41 DCR 1499.)

Legislative history of Law 5-76. — For Law 5-76, see notes following § 1-306.31.

Legislative history of Law 12-275. — For Law 12-275, see notes following § 1-306.31.

§ 1-306.39. Zoning regulations.

Nothing in this part shall supplant any requirement of the Zoning Regulations.

(Apr. 10, 1984, D.C. Law 5-76, § 3, 31 DCR 1049; Apr. 27, 1999, D.C. Law 12-275, § 2(a), 41 DCR 1499.)

Legislative history of Law 5-76. — For Law 5-76, see notes following § 1-306.31. **Legislative history of Law 12-275.** — For Law 12-275, see notes following § 1-306.31.

§ 1-306.40. Comprehensive plan requirement.

Nothing in this part shall obviate the requirement that zoning shall not be inconsistent with the Comprehensive Plan. However, the Zoning Commission and the Mayor's Office of Planning each shall consider an applicant's compliance with the requirements of this part as supportive of the Comprehensive Plan and as providing public amenities associated with an applicant's project.

(Apr. 10, 1984, D.C. Law 5-76, § 3, 31 DCR 1049; Apr. 27, 1999, D.C. Law 12-275, § 2(a), 41 DCR 1499.)

Legislative history of Law 5-76. — For Law 5-76, see notes following § 1-306.31. **Legislative history of Law 12-275.** — For Law 12-275, see notes following § 1-306.31.

§ 1-306.41. Exceptions.

The provisions of this part shall not apply to the following applicants:

(1) An applicant who obtains a street or alley closing or a zoning density increase for a development that includes, on or adjacent to the site of the development, an amount of housing that is equal to the amount that would be calculated pursuant to the formula set forth in § 1-306.33(2)(C);

(2) An applicant whose development obtains no additional commercial office space as a result of obtaining a street or alley closing or a zoning density increase;

(3) An applicant for a street or alley closing or a zoning density increase who represents a federal government agency, the Washington Metropolitan Area Transit Authority, or the Pennsylvania Avenue Development Corporation;

(4) An applicant who obtains additional commercial office space pursuant to the variance provisions of the Zoning Regulations;

(5) An applicant whose approved street or alley closing was decided by the Council, or whose approved zoning density increase was decided by the Zoning Commission, prior to October 6, 1994;

(6) An applicant who obtains a zoning density increase for a development that already is subject to a housing, retail, arts, or historic preservation requirement pursuant to the zoning regulations set forth in the Downtown Development District; or

(7) An applicant who obtains a street or alley closing or a zoning density increase for a development about which the Council, in its legislation that approves of the street or alley closing, or the Zoning Commission, in its order that approves of the zoning density increase, makes all of the following

findings after a public hearing, for which prior notice of a request for this exemption was provided to each affected Advisory Neighborhood Commission and in the District of Columbia Register, and during which the burden of proof is upon the applicant to justify granting this exemption:

(A) The development associated with the street or alley closing or zoning density increase is located within an area designated in the text or map of the Comprehensive Plan as a development opportunity area, a production and technical employment area, or a new or upgraded commercial center; and

(B) Imposition of no housing requirement or a housing requirement that is less stringent than the requirement imposed by this part is necessary to implement objectives and policies set forth in this Plan for that designated area, which otherwise would likely not be achieved.

(Apr. 10, 1984, D.C. Law 5-76, § 3, 31 DCR 1049; Apr. 27, 1999, D.C. Law 12-275, § 2(a), 41 DCR 1499.)

Legislative history of Law 5-76. — For Law 5-76, see notes following § 1-306.31.

Legislative history of Law 12-275. — For Law 12-275, see notes following § 1-306.31.

§ 1-306.42. Building permits associated with street or alley closing or zoning density increases.

An applicant who obtains a street or alley closing or a zoning density increase who is required to construct or rehabilitate affordable housing pursuant to this part shall not be issued a building permit for the applicant's commercial development until the applicant certifies to the District either that a building permit has been issued for the required amount of affordable housing, or that the applicant has contributed sufficient funds to a housing provider to construct or rehabilitate the required amount of affordable housing.

(Apr. 10, 1984, D.C. Law 5-76, § 3, 31 DCR 1049; Apr. 27, 1999, D.C. Law 12-275, § 2(a), 41 DCR 1500.)

Legislative history of Law 5-76. — For Law 5-76, see notes following § 1-306.31.

Legislative history of Law 12-275. — For Law 12-275, see notes following § 1-306.31.

§ 1-306.43. Street or alley closings or zoning density increases associated with housing trust fund contributions.

An applicant who obtains a street or alley closing or a zoning density increase who is required to contribute funds to a housing trust fund pursuant to this part shall proceed in accordance with the following schedule:

(1) Not less than $\frac{1}{2}$ of the required total contribution shall be made prior to the issuance of a building permit for any of the commercial development; and

(2) The balance of the required total contribution shall be made prior to the issuance of a certificate of occupancy for any of the commercial development.

(Apr. 10, 1984, D.C. Law 5-76, § 3, 31 DCR 1049; Apr. 27, 1999, D.C. Law 12-275, § 2(a), 41 DCR 1500.)

Legislative history of Law 5-76. — For Law 5-76, see notes following § 1-306.31.

Legislative history of Law 12-275. — For Law 12-275, see notes following § 1-306.31.

§ 1-306.44. Issuance of building permit or certificate of occupancy.

Prior to the issuance of a building permit or certificate of occupancy for the commercial development, whichever is applicable, the applicant shall certify to the District that the provisions of this part have been satisfied.

(Apr. 10, 1984, D.C. Law 5-76, § 3, 31 DCR 1049; Apr. 27, 1999, D.C. Law 12-275, § 2(a), 41 DCR 1500.)

Legislative history of Law 5-76. — For Law 5-76, see notes following § 1-306.31.

Legislative history of Law 12-275. — For Law 12-275, see notes following § 1-306.31.

§ 1-306.45. Regulations adopted to implement this part.

The Zoning Commission and all other agencies that have authority to adopt regulations to implement the housing linkage policies shall adopt regulations to implement the provisions of this part.

(Apr. 10, 1984, D.C. Law 5-76, § 3, 31 DCR 1049; Apr. 27, 1999, D.C. Law 12-275, § 2(a), 41 DCR 1500.)

Legislative history of Law 5-76. — For Law 5-76, see notes following § 1-306.31.

Legislative history of Law 12-275. — For Law 12-275, see notes following § 1-306.31.

Subchapter IV. Special Programs.

Part A

GENERAL.

§ 1-307.01. District of Columbia student loan insurance program.

(a) The government of the District of Columbia is authorized:

(1) To establish a student loan insurance program which meets the requirements of this part for a State loan insurance program in order to enter into agreements with the Commissioner for the purposes of this title;

(2) To enter into such agreements with the Commissioner;

(3) To use amounts appropriated for the purposes of this section to establish a fund for such purposes and for expenses in connection therewith;

(4) To accept and use donations for the purposes of this section; and

(5) To establish a student loan program for District of Columbia residents which shall be funded in whole or in part through the proceeds of Industrial

Revenue Bonds and to enter into agreements with other entities for the purpose of managing, regulating, and overseeing such a program.

(b) Notwithstanding the provisions of any applicable law, if the borrower, on any loan insured under the program established pursuant to this section, is a minor, any otherwise valid note or other written agreement executed by him for the purposes of such loan shall create a binding obligation.

(c) There are authorized to be appropriated such amounts as may be necessary for the purposes of this section.

(Nov. 8, 1965, Pub. L. 89-329, title IV, § 436; Nov. 3, 1966, 80 Stat. 1244, Pub. L. 89-572, § 12; Oct. 16, 1968, 82 Stat. 1024, Pub. L. 90-575, title I, § 116(b)(5); Oct. 12, 1976, 90 Stat. 2132, Pub. L. 94-482, title I, § 127(a); Nov. 19, 1985, D.C. Law 6-58, § 2, 32 DCR 5725.)

Prior Codifications. — 1981 Ed., § 1-358. 1973 Ed., § 1-265.

Legislative history of Law 6-58. — Law 6-58 was introduced in Council and assigned Bill No. 6-247, which was referred to the Committee on Education. The Bill was adopted on first and second readings on July 9, 1985 and September 10, 1985, respectively. Signed by the Mayor on September 30, 1985, it was assigned Act No. 6-81 and transmitted to both Houses of Congress for its review.

References in text. — In subsection (a), the words “this title” refer to Title IV of the Higher Education Act of 1965, as amended, which is classified to 20 U.S.C. § 1070 et seq.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts

Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 1-307.02. District of Columbia medical assistance program.

(a)(1) In accordance with paragraph (2) of this subsection, the Mayor may submit, under title XIX of the Social Security Act (Title XIX) to the Secretary of the United States Department of Health and Human Services, a plan for medical assistance (and any modifications of the plan) to enable the District to receive federal financial assistance under Title XIX for a medical assistance program established by the Mayor under such plan.

(2) Prior to submitting a plan, modification to a plan, or waiver as provided in paragraph (1) of this subsection, or prior to implementing any pending modification or waiver, the Mayor shall submit the plan to the Council for approval. If the Council does not approve or disapprove the submission within 30 days of receipt from the Mayor, the plan shall be deemed approved.

(3) Review and approval by the Council of the Fiscal Year 2010 Budget and Financial Plan shall constitute the Council review and approval required by paragraph 2 of this subsection of any modification or waiver to the state plan required to implement during fiscal year 2010 an initiative to:

(A) Utilize Disproportionate Share Hospital funding to support the

transition of individuals into health insurance programs through the modification of the Disproportionate Share Hospital qualification and distribution methodology;

- (B) Change service limit methodology for personal care aide services;
- (C) Enhance prescription drug utilization and review activities;
- (D) Reduce reimbursement rates for prescription drugs to align pharmaceutical spending with national payment trends;
- (E) Change methodologies for recovering improper payments;
- (F) Obtain available State Children's Health Insurance Program funding for immigrant children and pregnant women;
- (G) Shift coverage for unborn children of undocumented immigrants from the D.C. HealthCare Alliance to Medicaid;
- (H) Implement a new methodology for fee-for-service inpatient hospital reimbursement; and
- (I) Reduce disallowances for public provider agencies.

(4) Review and approval by the Council of the fiscal year 2011 budget and financial plan shall constitute the Council review and approval required by paragraph (2) of this subsection of any waiver, modification to the state plan, or modification to a waiver required during fiscal year 2011 for purposes of implementing federal health care reform initiatives as set forth in the Patient Protection and Affordable Care Act, approved March 23, 2010 (124 Stat. 119; Pub. L. No.111-148); provided, that the Department of Health Care Finance publishes a copy of any waiver, modification to the state plan, or modification to a waiver available on its website for at least 5 business days prior to submission to the Secretary of the United States Department of Health and Human Services.

(5) Review and approval by the Council of the Fiscal Year 2012 Budget and Financial Plan shall constitute the Council review and approval required by paragraph (2) of this subsection of:

(A) Any modification or waiver to the state plan required to change the methodology used for the reimbursement for single source brand name drugs from the average wholesale price minus 10% to wholesale acquisition cost plus 3%; and

(B) Any modification or waiver to the state plan required to change in whole or in part the level of personal-care services offered as a state plan benefit.

(b)(1) Notwithstanding any other provision of law, the Mayor may take such action as may be necessary to submit such plan to the Secretary and to establish and carry out such medical assistance program, except that in prescribing the standards for determining eligibility for and the extent of medical assistance under the District of Columbia's plan for medical assistance, the Mayor may not (except to the extent required by Title XIX of the Social Security Act):

(A) Prescribe maximum income levels for recipients of medical assistance under such plan which exceed:

(i) The Title XIX maximum income levels if such levels are in effect;
or

(ii) The Mayor's maximum income levels for the local medical assistance program if there are no Title XIX maximum income levels in effect; or

(B) Prescribe criteria which would permit an individual or family to be eligible for such assistance if such individual or family would be ineligible, solely by reason of his or its resources, for medical assistance both under the plan of the State of Maryland approved under Title XIX of the Social Security Act and under the plan of the State of Virginia approved under such title.

(2) For purposes of subparagraph (A) of paragraph (1) of this subsection:

(A) The term "Title XIX maximum income levels" means any maximum income levels which may be specified by Title XIX of the Social Security Act for recipients of medical assistance under state plans approved under that title;

(B) The term "the Mayor's maximum income levels for the local medical assistance program" means the maximum income levels prescribed for recipients of medical assistance under the District of Columbia's medical assistance program in effect in the fiscal year ending June 30, 1967; and

(C) During any of the first 4 calendar quarters in which medical assistance is provided under such plan there shall be deemed to be no Title XIX maximum income levels in effect if the Title XIX maximum income levels in effect during such quarter are higher than the Mayor's maximum income levels for the local medical assistance program.

(c) The District state plan required under Title XIX of the Social Security Act, approved July 30, 1965 (79 Stat. 343; 42 U.S.C. § 1396 et seq.), shall provide that all persons in the following categories are eligible for Medicaid benefits:

(1) A pregnant woman or an infant under 1 year of age with an income up to 185% of the federal poverty line, as authorized by § 1902(a)(1) of the Social Security Act, approved July 30, 1965 (79 Stat. 343; 42 U.S.C. § 1396a(a)(1));

(2) A child born after September 30, 1983, who has not attained the age of 8 years and whose family income is not more than 100% of the federal poverty line, as authorized by § 1902 of the Social Security Act, approved July 30, 1965 (79 Stat. 343; 42 U.S.C. § 1396a); and

(3) A pregnant woman or a child during a presumptive eligibility period as authorized by § 1902(a) of the Social Security Act, approved July 30, 1965 (79 Stat. 343; 42 U.S.C. § 1396a(a)).

(d)(1) For purposes of this subsection, the term:

(A) "TANF-related Medicaid recipient" means a family that has dependent children under 21 years of age in the home and whose income is not low enough to qualify for financial assistance, but is low enough to qualify for medical assistance.

(B) "Health maintenance organization" means a public or private organization, operating in the District of Columbia, which contracts with the District government to provide comprehensive health maintenance, preventive and treatment services emphasizing access to primary care for enrolled members of the plan through its own network of physicians and hospitals for a fixed prepaid premium.

(C) "Managed care provider" means either a primary care provider or a health maintenance organization.

(D) "Primary care provider" means a physician, clinic, hospital, or neighborhood health center that is responsible for providing primary care and coordinating referrals, when necessary, to other health care providers.

(E) "Restricted recipient" means a person who has been restricted to one designated primary care provider for a minimum of one year after a finding of abuse or misuse of Medicaid services by the Commission on Health Care Financing.

(2) The Mayor shall establish a plan to mandate enrollment of TANF and TANF-related Medicaid recipients in a managed care program for the purpose of providing access to comprehensive and coordinated health care in an efficient and cost effective manner. The plan shall provide the following:

(A) TANF and TANF-related Medicaid recipients shall select any health maintenance organization with a current contract with the District of Columbia to provide managed care services to TANF and TANF-related Medicaid recipients on a capitated method of payment;

(B) The Mayor shall exclude TANF and TANF-related Medicaid recipients from the managed care program who are:

(i) Residents in a nursing facility or intermediate care facility for persons with mental retardation;

(ii) Repealed.

(iii) Eligible for Medicaid for a period that is less than 3 months;

(iv) Eligible for a period that is retroactive;

(v) Foster children residing outside the District of Columbia; or

(vi) Restricted recipients.

(C) The Mayor shall assign any TANF and TANF-related Medicaid recipient who does not choose a provider within a reasonable time to a health maintenance organization described in subparagraph (A) of this paragraph.

(i) A managed care provider as described in subparagraph (A)(i) [sic] of this paragraph; or

(ii) A managed care provider that is an employee or entity of the District government.

(D) Repealed.

(E) TANF and TANF-related Medicaid recipients enrolled in a managed care program shall be exempted from any additional co-payment requirements other than those imposed by the Medicaid program.

(F) The Mayor shall develop an education program to fully inform TANF and TANF-related Medicaid recipients about the various managed care programs to ensure better care for recipients while avoiding unnecessary and inappropriate use of hospital based services for preventive and primary care.

(3) In order to participate in the managed care plan, a provider must:

(A) Be a Medicaid qualified provider and be accessible to enrollees on a 24 hours per day, 7 days per week basis. The Mayor shall establish a monitoring system to ensure that recipients have 24 hours per day, 7 days per week access to their managed care providers and that treatment is provided in a timely manner; and

(B) Have a written contract with the District government which provides detailed information regarding the responsibilities of the managed care

provider and the District government for providing or arranging for the provision of, and making payment for all services to which the TANF and TANF-related Medicaid recipient is entitled under the District state Medicaid plan.

(4) The Mayor shall maintain a grievance and appeal process for TANF and TANF-related Medicaid recipients enrolled in a managed care program.

(5) The Mayor shall require that managed care providers, which receive a capitated method of payment, submit adequate assurances to protect the District government against risk in case a provider becomes insolvent.

(6) To implement the requirements of this subsection the Mayor shall:

(A) Amend the District state Medicaid plan pursuant to § 4-204.05; and

(B) Seek and obtain all necessary waivers of federal Medicaid statutes, rules and regulations.

(7) The Mayor shall submit to the Council on an annual basis an assessment of the cost effectiveness of the managed care plan and its impact on the TANF and TANF-related Medicaid recipient's access to care of adequate quality.

(Dec. 27, 1967, 81 Stat. 744, Pub. L. 90-227, § 1; May 15, 1990, D.C. Law 8-124, § 2, 37 DCR 2087; Mar. 17, 1993, D.C. Law 9-247, § 2, 40 DCR 1150; Nov. 25, 1993, D.C. Law 10-65, § 101, 40 DCR 7351; Sept. 26, 1995, D.C. Law 11-52, § 501, 42 DCR 3684; Mar. 26, 1999, D.C. Law 12-175, § 102, 45 DCR 7193; Oct. 20, 1999, D.C. Law 13-38, § 2205, 46 DCR 6373; Apr. 24, 2007, D.C. Law 16-305, § 2, 53 DCR 6198; Mar. 3, 2010, D.C. Law 18-111, § 5031, 57 DCR 181; Sept. 24, 2010, D.C. Law 18-223, § 5002, 57 DCR 6242; Sept. 14, 2011, D.C. Law 19-21, § 5042, 58 DCR 6226.)

Cross references. — Medicaid provider fraud prevention, "Medicaid program" defined, see § 4-801.

Prior Codifications. — 1981 Ed., § 1-359. 1973 Ed., § 1-266.

Effect of amendments. — D.C. Law 13-38 rewrote subsec. (a), which previously read:

"The Mayor of the District of Columbia (hereafter in this section and § 1-360 referred to as the 'Mayor') may submit under Title XIX of the Social Security Act to the Secretary of Health and Human Services (hereafter in this section and § 1-360 referred to as the 'Secretary') a plan for medical assistance (and any modifications of such plan) to enable the District of Columbia to receive federal financial assistance under such title for a medical assistance program established by the Mayor under such plan."

Section 2204 of D.C. Law 13-38 provided that the Mayor shall issue rules to implement the provisions of the act.

Sections 3902 and 3903 of D.C. Law 13-172 provided:

"Sec. 3902. The Medical Assistance Administration ('MAA') shall work closely with all District agencies and the Budget Director of the Council of the District of Columbia, in estab-

lishing Medicaid rates and Medicaid waiver programs to maximize Federal dollars as a means of reimbursement for services provided by District of Columbia agencies.

"Sec. 3903. MAA shall submit to the Council no later than 15 days after the end of each quarter a report that identifies new District agency programs that are participating in the Medicaid program and the potential savings in local funds associated with their participation."

D.C. Law 16-305, in subsec. (d)(2)(B)(i), substituted "persons with mental retardation" for "the mentally retarded".

D.C. Law 18-111 added subsec. (a)(3).

D.C. Law 18-223 added subsec. (a)(4).

D.C. Law 19-21 added subsec. (a)(5).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 501 of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

For temporary (225 day) amendment of section, see § 5 of Public Assistance Temporary Amendment Act of 1997 (D.C. Law 12-7, August 1, 1997, law notification 44 DCR 4639).

For temporary (225 day) amendment of section, see § 2 of TANF and TANF-Related Med-

icaid Managed Care Program Temporary Amendment Act of 1997 (D.C. Law 12-70, April 29, 1998, law notification 45 DCR 2105).

For temporary (225 day) amendment of section, see § 5 of Public Assistance Temporary Amendment Act of 1998 (D.C. Law 12-130, July 24, 1998, law notification 45 DCR 6501).

For temporary (225 day) amendment of section, see § 2 of TANF-Related Medicaid Managed Care Program Technical Clarification Temporary Amendment Act of 1997 (D.C. Law 12-277, April 27, 1999, law notification 46 DCR 4283).

Emergency legislation. — For temporary amendment of section, see § 5 of the Public Assistance Emergency Amendment Act of 1997 (D.C. Act 12-25, February 27, 1997, 44 DCR 1778), § 5 of the Public Assistance Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-77, May 27, 1997, 44 DCR 3181), and § 5 of the Public Assistance Emergency Amendment Act of 1998 (D.C. Act 12-306, March 20, 1998, 45 DCR 1900).

For temporary amendment of section, see § 2 of the TANF and TANF-Related Medicaid Managed Care Program Emergency Amendment Act of 1997 (D.C. Act 12-197, December 2, 1997, 44 DCR 7484), § 2 of the TANF-Related Medicaid Managed Care Program Technical Clarification Emergency Amendment Act of 1998 (D.C. Act 12-605, January 20, 1999, 46 DCR 1287), § 2 of the TANF and TANF-Related Medicaid Managed Care Program Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-501, November 10, 1998, 45 DCR 8123) and § 2 of the TANF and TANF-Related Medicaid Managed Care Program Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-5, February 8, 1999, 46 DCR 2294).

For temporary (90-day) amendment of section, see §§ 2204 and 2205 of the Service Improvement and Fiscal Year 2000 Budget Support Emergency Act of 1999 (D.C. Act 13-110, July 28, 1999, 46 DCR 6320).

For temporary (90-day) directive to Medical Assistance Administration to work with District agencies and the Council Budget Director to establish rates and programs to maximize Federal reimbursement dollars and to report to the Council on new agency programs participating in Medicaid, see §§ 3902 and 3903 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see §§ 3902 and 3903 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

For temporary (90 day) enactments, see §§ 5092, 5102 to 5104 of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) enactments, see §§ 5092, 5102 to 5104 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) enactments, see §§ 5092, 5102 to 5104 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

For temporary (90 day) amendment of section, see § 5002 of Fiscal Year 2010 Budget Support Emergency Act of 2009 (D.C. Act 18-187, August 26, 2009, 56 DCR 7374).

For temporary (90 day) amendment of section, see § 5031 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 5031 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

For temporary (90 day) amendment of section, see § 5002 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

For temporary (90 day) amendment of section, see § 5012 of Fiscal Year 2012 Budget Support Emergency Act of 2011 (D.C. Act 19-93, June 29, 2011, 58 DCR 5599).

For temporary (90 day) amendment of section, see § 5152 of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) amendment of section, see § 5152 of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 8-124. — Law 8-124 was introduced in Council and assigned Bill No. 8-374, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on February 13, 1990, and February 27, 1990, respectively. Signed by the Mayor on March 15, 1990, it was assigned Act No. 8-177 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-247. — Law 9-247, the "Medicaid Managed Care Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-425, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on December 1, 1992, and December 15, 1992, respectively. Signed by the Mayor on January 8, 1993, it was assigned Act No. 9-392 and transmitted to both Houses of Congress for its review. D.C. Law 9-247 became effective on March 17, 1993.

Legislative history of Law 10-65. — Law 10-65, the "Omnibus Spending Reduction Act of

1993,” was introduced in Council and assigned Bill No. 10-323, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on July 21, 1993, and September 21, 1993, respectively. Signed by the Mayor on October 6, 1993, it was assigned Act No. 10-120 and transmitted to both Houses of Congress for its review. D.C. Law 10-65 became effective on November 25, 1993.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 1-303.22.

Legislative history of Law 12-175. — Law 12-175, the “Fiscal Year 1999 Budget Support Act of 1998,” was introduced in Council and assigned Bill No. 12-618, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 5, 1998, and June 2, 1998, respectively. Signed by the Mayor on June 23, 1998, it was assigned Act No. 12-399 and transmitted to both Houses of Congress for its review. D.C. Law 12-175 became effective on March 26, 1999.

Legislative history of Law 13-38. — For Law 13-38, see notes following § 1-301.91.

Legislative history of Law 16-305. — Law 16-305, the “People First Respectful Language Modernization Act of 2006,” was introduced in Council and assigned Bill No. 16-664, which was referred to Committee on the Whole. The Bill was adopted on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 17, 2006, it was assigned Act No. 16-437 and transmitted to both Houses of Congress for its review. D.C. Law 16-305 became effective on April 24, 2007.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 1-301.181.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 1-301.78.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 1-301.01.

Short title. — Short title: Section 5091 of D.C. Law 16-192 provided that subtitle I of title V of the act may be cited as the “Medicaid Enrollment and Expansion Act of 2006”.

Short title: Section 5101 of D.C. Law 16-192 provided that subtitle I of title V of the act may be cited as the “Medical Assistance Administration Reporting Requirements Act of 2006”.

Short title: Section 5030 of D.C. Law 18-111 provided that subtitle D of title V of the act may be cited as the “Medical Assistance Program Amendment Act of 2009”.

Short title: Section 5001 of D.C. Law 18-223 provided that subtitle A of title IV of the act may be cited as the “Medical Assistance Program Amendment Act of 2010”.

Short title: Section 5041 of D.C. Law 19-21 provided that subtitle E of title V of the act may

be cited as “Medical Assistance Program Amendment Act of 2011”.

References in text. — “Title XIX of the Social Security Act,” referred to in this section, is codified as 42 U.S.C. § 1396 et seq.

Delegation of Authority. — Delegation of authority under D.C. Law 9-247, the “Medicaid Managed Care Amendment Act of 1992”, see Mayor’s Order 93-218, December 1, 1993.

Resolutions. — Resolution 14-520, the “Modification to the Medicaid Home and Community-Based Waiver for Individuals with Mental Retardation and Developmental Disabilities Emergency Approval Resolution of 2002”, was approved effective July 19, 2002.

Resolution 14-558, the “Medicaid State Plan Amendment for the Breast and Cervical Cancer Treatment Program Emergency Approval Resolution of 2002”, was approved effective September 27, 2002.

Resolution 15-295, the “Modification to the Medicaid Home and Community-based Waiver for Individuals with Mental Retardation and Developmental Disabilities Disapproval Resolution of 2003”, was approved effective November 4, 2003.

Resolution 15-784, the “Renewal of the Home and Community-based Services Waiver Governing Water Filters for Persons with HIV/AIDS Emergency Approval Resolution of 2004”, was approved effective December 7, 2004.

Resolution 16-108, the “Medicaid Home and Community-based Waiver for Persons with Mental Retardation and Developmental Disabilities Modification Governing Physical Therapy, Occupational Therapy, Speech Therapy and Skilled Nursing Services Approval Resolution of 2005”, was approved effective April 1, 2005.

Resolution 16-154, the “Use of less Restrictive Income and Resource Criteria for Selected Medicaid Populations Approval Resolution of 2005”, was approved effective May 6, 2005.

Resolution 16-205, the “Medicaid Preferred Drug List (PDL) Program for Pharmacy Services Approval Resolution of 2005”, was approved effective June 17, 2005.

Resolution 16-273, the “Medicaid State Plan Amendment to Raise the Federal Poverty Levels of Qualified Medicare Beneficiaries and Specified Low Income Medicare Beneficiaries Emergency Approval Resolution of 2005”, was approved effective July 6, 2005.

Resolution 16-281, the “Medicaid Case Mix Prescription Drugs Approval Resolution of 2005”, was approved effective July 8, 2005.

Resolution 16-282, the “Medicaid State Plan Amendment to Implement a Case Mix Nursing Facility Reimbursement System with a Ventilator Services Add-on Rate Approval Resolution of 2005”, was approved effective July 8, 2005.

Resolution 16-283, the “Medicaid State Plan Amendment and Waiver Instituting a Non-

emergency Transportation Broker Delivery System Approval Resolution of 2005", was approved effective July 22, 2005.

Resolution 16-284, the "Medicaid Acute Involuntary Admissions Payment State Plan Amendment Approval Resolution of 2005", was approved effective July 22, 2005.

Resolution 16-285, the "Medicaid D.C. Coverage Initiative Health Insurance Flexibility and Accountability Waiver Approval Resolution of 2005", was approved effective July 22, 2005.

Resolution 16-286, the "Medicaid State Plan Amendment Governing Liens and Adjustments or Recoveries Approval Resolution of 2005", was approved effective August 6, 2005.

Resolution 16-296, the "Medicaid State Plan Amendment Ensuring Compliance with the Low Income Subsidy Provisions of the Medicare Modernization Act Emergency Approval Resolution of 2005", was approved effective September 20, 2005.

Resolution 16-354, the "Demonstration Waiver for Medicaid and State Children's Health Insurance Program Coverage for Evacuees of Hurricane Katrina Residing in the District of Columbia Emergency Approval Resolution of 2005", was approved effective November 1, 2005.

Resolution 16-478, the "Medicaid School-Based Health Services Approval Resolution of 2006", was approved effective January 20, 2006.

Resolution 16-580, the "Medicaid State Plan Amendment for Managed Care Compliance with the Medicare Modernization Act Emergency Approval Resolution of 2006", was approved effective March 7, 2006.

Resolution 16-785, the "Medicaid Reserved Bed Days Payment Modification Approval Resolution of 2006", was approved effective August 11, 2006.

Resolution 16-786, the "Medicaid Maximum Allowable Cost State Plan Amendment Approval Resolution of 2006", was approved effective August 11, 2006.

Resolution 16-787, the "Modification to the Medicaid Disproportionate Share Hospital Payment Methodology State Plan Amendment Approval Resolution of 2006", was approved effective August 11, 2006.

Resolution 16-875, the "Expansion of Adult Dental Services Emergency Approval Resolution of 2006", was approved effective November 14, 2006.

Resolution 16-877, the "Determination of Eligibility for Qualified Medicare Beneficiaries Emergency Approval Resolution of 2006", was approved effective November 14, 2006.

Resolution 16-879, the "Expansion of Allowable Income for Determination of State Child Health Insurance Program Eligibility Emergency Approval Resolution of 2006", was approved effective November 14, 2006.

Resolution 16-958, the "Disqualification for Medicaid Long-Term Care Assistance for Individuals with Substantial Home Equity Interest Approval Resolution of 2006", was approved effective December 15, 2006.

Resolution 16-959, the "Medicaid Elderly and Persons with Physical Disabilities Waiver Renewal Application Approval Resolution of 2006", was approved effective December 15, 2006.

Editor's notes. — Mayor authorized to issue rules: Section 3 of D.C. Law 9-247 provided that the Mayor shall issue rules necessary to implement subsection (d) of this section pursuant to subchapter I of Chapter 15 of Title 1.

Sections 5092 and 5093 of D.C. Law 16-192 provided:

"Sec. 5092. Within 30 days of the effective date of this subtitle, the Mayor shall submit Medicaid State Plan Amendments to the Council pursuant to section (1)(a) of An Act To enable the District of Columbia to receive Federal financial assistance under title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02(a)) to achieve the following:

"(1) Increase the maximum eligibility standards of the State Children's Health Insurance Program from 200% of the Federal Poverty Guidelines to 300% of the Federal Poverty Guidelines;

"(2) Increase the maximum eligibility standards for Qualified Medicare Beneficiaries and Special Low-Income Medicare Beneficiaries to 300% of the Federal Poverty Guidelines;

"(3) Establish a comprehensive adult dental program; and

"(4) Draw down an additional \$9,750,000 in presently uncaptured federal matching funds for the purpose of expanding school health services."

Sec. 5093. Penalties. "An agency head, deputy agency head, agency chief financial officer, agency budget director, agency controller, manager, or other employee may be subject to adverse personnel action, including removal, for not submitting the plan in accordance with this subtitle."

Sections 5102 to 5104 of D.C. Law 16-192 provided:

"Sec. 5102. Non-Emergency Transportation Reform Report.

"The Medical Assistance Administration ('MAA') within the Department of Health shall provide a report to the Council by October 1, 2006, on the status of its efforts to reform the Medicaid Non-Emergency Transportation ('NEMT') Program. The report shall:

"(1) Describe MAA's plans and proposed timelines to:

"(A) Verify that all Medicaid NEMT services are provided to clients that have been certified

as medically necessary and make such certifications subject to renewal;

“(B) Institute a prior-authorization system that maintains public transportation as the default method of NEMT;

“(C) Require transportation vendors to submit documentation of services provided, including purpose of trip, pick-up location, drop-off location, and times; and

“(D) Increase MAA oversight of NEMT abnormalities and high usage; and

“(2) Quantify the potential savings from the measures described in paragraph (1) of this section.

“Sec. 5103. Out-of-state reimbursement report.

“The MAA within the Department of Health shall provide a report to the Council by October 1, 2006, on the status of its efforts to decrease payments to providers located outside the District of Columbia. The report shall:

“(1) Describe MAA's plans and proposed timelines to:

“(A) Transition the residency of individuals in nursing facilities located outside the District to the state where the nursing facility is located; and

“(B) Implement fraud protections and increasing oversight of payments made to non-District providers for Medicaid services, including reimbursements to physicians, hospitals, nursing facilities, pharmacies, Intermediate Care Facilities for the Mentally Retarded, and day treatment centers; and

“(2) Quantify the potential savings from the measures described in paragraph (1) of this section.

“Sec. 5104. Penalties.

“An agency head, deputy agency head, agency chief financial officer, agency budget director, agency controller, manager, or other employee may be subject to adverse personnel action, including removal, for not submitting the report required by section 5102 or by 5103.”

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Chiropractic services.

Fee structures.

Judicial review.

Local authority.

Payments under state plan.

Pleadings.

Podiatric services.

Scope of services.

Chiropractic services.

Fact that Congress has chosen to limit chiropractors' services compensable under medicaid does not indicate that Congress intended to prohibit the states from limiting the scope of other services. Social Security Act, § 1905(a)(6), (e) as amended 42 U.S.C. § 1396d(a)(6), (e). District of Columbia Podiatry Soc. v. District of Columbia, 407 F. Supp. 1259, 1975 U.S. Dist. LEXIS 15082 (1975).

Fee structures.

Use of relative value scale in fixing fees for podiatrists rendering compensable services un-

der District of Columbia medicaid plan does not violate medicaid regulation that a state plan must provide that payments for care and services are not in excess of specified upper limits; also, fact that District officials failed to make findings required by the regulation was of no consequence to the complaining podiatrists since such matters are of concern only between the state agency and the federal government; in any event, it was not shown that the fee structure had not enlisted sufficient participation by podiatrists. Social Security Act, §§ 1901, 1902(a)(13)(B), 1905(a)(1-17), (a)(6) as amended 42 U.S.C. §§ 1396, 1396a(a)(13)(B), 1396d(a)(1-17), (a)(6). District of Columbia Podiatry Soc. v. District of Columbia, 407 F. Supp. 1259, 1975 U.S. Dist. LEXIS 15082 (1975).

Although no lower limit has been placed on medicaid payments, a state plan must provide a sufficient fee structure so as to enlist participation of a sufficient number of providers of services. Social Security Act, §§ 1901, 1902(a)(13)(B), 1905(a)(1-17), (a)(6) as amended 42 U.S.C. §§ 1396, 1396a(a)(13)(B),

1396d(a)(1-17), (a)(6). District of Columbia Podiatry Soc. v. District of Columbia, 407 F. Supp. 1259, 1975 U.S. Dist. LEXIS 15082 (1975).

Judicial review.

Claim that medicaid statutes violated equal protection component of due process clause of Fifth Amendment on ground that physicians are compensated for full range of podiatric services while podiatrist may be limited in the compensable services which they may render and that physicians are often compensated at a higher rate did not raise substantial constitutional question requiring convening of three-judge court. 18 U.S.C. § 2284; Social Security Act, § 1901 et seq. as amended 42 U.S.C. § 1396 et seq.; U.S. Const. Amend. 5. District of Columbia Podiatry Soc. v. District of Columbia, 407 F. Supp. 1259, 1975 U.S. Dist. LEXIS 15082 (1975).

In action contesting decision of Department of Human Resources that plaintiffs were ineligible for Medicaid benefits, where plaintiffs were ineligible because of over-income for Medicaid benefits even under standard of eligibility they advocated was applicable to their request and plaintiffs had submitted medical bills to Department for payment but Department had taken no action, there was no justiciable case or controversy for judicial review. Social Security Act, §§ 1901 et seq., 1902(a)(10, 17), 42 U.S.C. §§ 1396 et seq., 1396a(a)(10, 17); D.C. Code §§ 1-266, 3-202(a). Pugh v. District of Columbia Dep't of Human Resources, etc., 293 A.2d 490, 1972 D.C. App. LEXIS 221 (1972).

Local authority.

The medicaid provisions of Social Security Act create a welfare assistance program with limited funding; it is not an insurance program such as medicare and, hence, it is necessary for medicaid funds to be used in the most economical manner possible and it is for the states, operating within federal guidelines, to make such economic determinations. Social Security Act, §§ 1901, 1902(a)(13)(B), 1905(a)(1-17), (a)(6) as amended 42 U.S.C. §§ 1396, 1396a(a)(13)(B), 1396d(a)(1-17), (a)(6). District of Columbia Podiatry Soc. v. District of Columbia, 407 F. Supp. 1259, 1975 U.S. Dist. LEXIS 15082 (1975).

Medicaid provisions of the Social Security Act create a scheme of cooperative federalism; it was the intent of Congress to give the states considerable discretion and latitude in devising their medicaid plans. Social Security Act, § 1901 as amended 42 U.S.C. § 1396. District of Columbia Podiatry Soc. v. District of Columbia, 407 F. Supp. 1259, 1975 U.S. Dist. LEXIS 15082 (1975).

Payments under state plan.

Payments made by managed care organizations (MCOs) to hospitals for inpatient care of

low income patients pursuant to District of Columbia Medicaid plan requiring residents qualifying for Medicaid based on eligibility for Temporary Assistance for Needy Families program to enroll in MCO constituted payments "under a state plan" to hospitals that should have been including in operating costs in calculating hospitals' disproportionate share adjustment percentage; nothing in statute required that payment be made by state itself in order to qualify as payment under state plan. District of Columbia Hosp. Ass'n v. District of Columbia, 224 F.3d 776, 2000 U.S. App. LEXIS 17520 (C.A.D.C. 2000).

Pleadings.

Leave of court would not be given to amend complaint challenging District of Columbia medicaid plan to add claim that since physicians are compensable under medicaid for full range of podiatric services and are often compensated at a higher rate the statute authorizing discrimination between physicians and podiatrists could create a classification which discriminates against podiatrists in violation of equal protection. Social Security Act, § 1901 et seq. as amended 42 U.S.C. § 1396 et seq.; U.S. Const. Amend. 5; Fed. Rules Civ. Proc. rule 15(a), 18 U.S.C. District of Columbia Podiatry Soc. v. District of Columbia, 407 F. Supp. 1259, 1975 U.S. Dist. LEXIS 15082 (1975).

Podiatric services.

Limiting podiatric services that podiatrists may provide under District of Columbia medicaid plan while permitting physicians to furnish a full range of podiatric care did not violate medicaid provisions of the Social Security Act or implementing regulations. Social Security Act, §§ 401 et seq., 1902(a)(13)(B), 1905(a)(1-17), (a)(6), (g)(2), as amended 42 U.S.C. §§ 601 et seq., 1396a(a)(13)(B), 1396d(a)(1-17), (a)(6), (g)(2); D.C. Code § 2-711. District of Columbia Podiatry Soc. v. District of Columbia, 407 F. Supp. 1259, 1975 U.S. Dist. LEXIS 15082 (1975).

Provision of District of Columbia medicaid plan limiting podiatric services that podiatrists may provide does not violate the "free choice" provision of the medicaid statute since such provision does not entitle a recipient to obtain assistance from a podiatrist for those services that, under the District plan, may only be performed by a physician. Social Security Act, § 1902(a)(23) as amended 42 U.S.C. § 1396a(a)(23). District of Columbia Podiatry Soc. v. District of Columbia, 407 F. Supp. 1259, 1975 U.S. Dist. LEXIS 15082 (1975).

District of Columbia medicaid provisions distinguishing between physicians and podiatrists as regards compensation for services is not in violation of Social Security Act or governing regulations. Social Security Act, §§ 1901,

1902(a)(13)(B), 1905(a)(1-17), (a)(6) as amended 42 U.S.C. §§ 1396, 1396a(a)(13)(B), 1396d(a)(1-17), (a)(6). District of Columbia Podiatry Soc. v. District of Columbia, 407 F. Supp. 1259, 1975 U.S. Dist. LEXIS 15082 (1975).

Scope of services.

Although medicaid regulations permit a state to limit scope of optional services compensable under medicaid, the scope of services provided should be sufficient to reasonably achieve their purpose. Social Security Act, §§ 1901, 1902(a)(13)(B), 1905(a)(1-17), (a)(6) as amended 42 U.S.C. §§ 1396, 1396a(a)(13)(B), 1396d(a)(1-17), (a)(6). District of Columbia Po-

diatry Soc. v. District of Columbia, 407 F. Supp. 1259, 1975 U.S. Dist. LEXIS 15082 (1975).

Affidavit indicating that medicaid unit of District of Columbia received no complaints from eligible recipients that they were unable to obtain needed podiatric care was not conclusive on issue of whether scope of podiatric services covered by the D.C. medicaid plan was sufficient to reasonably achieve its purpose. Social Security Act, § 1905(a)(6) as amended 42 U.S.C. § 1396d(a)(6). District of Columbia Podiatry Soc. v. District of Columbia, 407 F. Supp. 1259, 1975 U.S. Dist. LEXIS 15082 (1975).

§ 1-307.02a. Minimum maintenance needs allowance for an institutionalized Medicaid beneficiary with a community spouse.

For purposes of protecting the income of the community spouse of a Medicaid beneficiary who is institutionalized, the Mayor is directed to set the minimum monthly maintenance needs allowance at the maximum level permitted under section 1924 of the Social Security Act, approved July 1, 1988 (102 Stat. 758; 42 U.S.C. § 1396r-5), and to amend the District of Columbia Medicaid State Plan accordingly.

(Mar. 11, 1992, D.C. Law 9-70, § 2, 39 DCR 18.)

§ 1-307.03. Medical assistance expansion program establishment.

(a) The Mayor shall establish a program to expand medical assistance to adult District residents with an annual family income up to 200% of the federal poverty level.

(1) The Mayor may provide medical assistance to eligible residents by making arrangements with managed care providers either on a fee-for-service or capitated basis.

(2) Enrollees of the program shall select a health maintenance organization with a current contract with the District to provide managed care services.

(3) The Mayor shall assign any enrollee who does not choose a provider within a reasonable period of time to the District of Columbia Health and Hospitals Public Benefit Corporation.

(4)(A) In fiscal year 2000, the Mayor may establish a pilot project to expand Medicaid coverage to not more than 2,400 adult District residents.

(B) The funding for the pilot shall be derived by amending the Disproportionate Share adjustment paid to hospitals.

(5) To implement any expansion for adult District residents with an annual family income up to 200% of the federal poverty level the Mayor shall:

(A) Seek and obtain all necessary waivers of federal Medicaid statutes, rules, and regulations; and

(B) Amend the District State Medicaid plan.

(b) The Mayor shall establish a program to provide medical assistance to undocumented children not eligible for coverage under Medicaid who reside in the District and have an annual family income up to 200% of the federal poverty level.

(1) The Mayor may provide medical assistance to eligible residents by making arrangements with managed care providers either on a fee-for-service or capitated basis.

(2) Enrollees of the program shall select a health maintenance organization with a current contract with the District to provide managed care services.

(3) The Mayor shall assign any enrollee who does not choose a provider within a reasonable period of time to the District of Columbia Health and Hospitals Public Benefit Corporation.

(4) In fiscal year 2000, the Mayor shall establish a pilot program to provide medical assistance to not more than 500 immigrant children not eligible to be covered under Medicaid.

(c) Beginning with fiscal year 2001, the Mayor may increase enrollment contingent upon the certification by the Chief Financial Officer of the availability of funding and subject to the District's financial plan and budget.

(d) The Mayor may provide financial support to providers to register the uninsured in conformity with the financial plan and budget.

(e) Nothing in this section, § 1-307.05, or § 1-307.06 shall be deemed to create or constitute an entitlement or right to medical coverage.

(Oct. 20, 1999, D.C. Law 13-38, § 2202, 46 DCR 6373; Oct. 19, 2000, D.C. Law 13-172, § 4802(a), 47 DCR 6308; Mar. 3, 2010, D.C. Law 18-111, § 7009, 57 DCR 181.)

Prior Codifications. — 1981 Ed., § 1-360.1.

Effect of amendments. — D.C. Law 13-172, in subsec. (b)(4), substituted "immigrant" for "undocumented".

Sections 3902 and 3903 of D.C. Law 13-172 provided:

"Sec. 3902. The Medical Assistance Administration ('MAA') shall work closely with all District agencies and the Budget Director of the Council of the District of Columbia, in establishing Medicaid rates and Medicaid waiver programs to maximize Federal dollars as a means of reimbursement for services provided by District of Columbia agencies.

"Sec. 3903. MAA shall submit to the Council no later than 15 days after the end of each quarter a report that identifies new District agency programs that are participating in the Medicaid program and the potential savings in local funds associated with their participation."

D.C. Law 18-111, in subsec. (e), deleted the first sentence which read: "This section, § 1-307.05, and § 1-307.06 are subject to the availability of appropriations."

Emergency legislation. — For temporary (90-day) addition of section, see § 902 of the Fiscal Year 1999 Budget Support Congressional

Review Emergency Act of 1999 (D.C. Act 13-41, March 31, 1999, 46 DCR 3446).

For temporary (90-day) directive to Medical Assistance Administration to work with District agencies and the Council Budget Director to establish rates and programs to maximize Federal reimbursement dollars and to report to the Council on new agency programs participating in Medicaid, see §§ 3902 and 3903 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see §§ 3902, 3903, and 4802 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

For temporary (90 day) amendment of section, see § 7009 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 7009 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 13-172. — Law 13-172, the "Fiscal Year 2001 Budget Support

Act of 2000," was introduced in Council and assigned Bill No. 13-679, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 18, 2000, and June 6, 2000, respectively. Signed by the Mayor on June 26, 2000, it was assigned Act No. 13-375 and transmitted to both Houses of Congress for its review. D.C. Law 13-172 became effective on October 19, 2000.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 1-301.181.

Short title. — Section 2201 of D.C. Law 13-38 provided: "This title may be cited as the 'Medical Assistance Expansion Program Act of 1999'."

Editor's notes. — Short title: Section 5051 of D.C. Law 17-219 provided that subtitle T of title V of the act may be cited as the "Medicaid Fee-For-Service State Plan Amendment Act of 2008".

Section 5052 of D.C. Law 17-219 provided: "By October 1, 2008, the Mayor shall submit to the Council a Medicaid state plan amendment that will increase the specialty physician and primary care physician reimbursement rates under the District Medicaid fee-for-service program to match the specialty physician and primary care physician reimbursement rates under the federal Medicare program."

§ 1-307.04. Supplementary medical insurance program.

The Mayor may enter into an agreement (and any modifications of such agreement) with the Secretary under § 1843 of the Social Security Act pursuant to which:

(1) Eligible individuals (as defined in § 1836 of the Social Security Act) who are eligible to receive medical assistance under the District of Columbia's plan for medical assistance approved under Title XIX of the Social Security Act will be enrolled in the supplementary medical insurance program established under part B of Title XVIII of the Social Security Act; and

(2) Provisions will be made for payment of the monthly premiums of such individuals for such program.

(Dec. 27, 1967, 81 Stat. 745, Pub. L. 90-227, § 2.)

Prior Codifications. — 1981 Ed., § 1-360. 1973 Ed., § 1-267.

References in text. — Section 1843 of the Social Security Act, referred to in the introductory language, is set out as § 1395v of Title 42 of the United States Code.

Title XIX of the Social Security Act, referred to in (1), is set out as 42 U.S.C. § 1396 et seq.

Section 1836 of the Social Security Act, referred to in (1), is set out in § 1395o of Title 42 of the United States Code.

Part B of Title XVIII of the Social Security Act, referred to in (1), is set out as §§ 1395j to 1395w-4 of Title 42 of the United States Code.

Editor's notes. — Private Attorney Contract Authorization: Title XIII of D.C. Law 12-175 authorized the District of Columbia to enter into contingent fee contracts for private attorney services in bringing Medicaid reimbursement litigation.

Change in Government. — This section originated at a time when local government

powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

Abortions.

Action to enjoin, on constitutional grounds, Secretary of Health, Education and Welfare

from complying with provision of federal appropriations statute prohibiting Secretary from using any money appropriated to him to per-

form abortions except where the life of mother would be endangered if fetus were carried to term, would be dismissed where there was possibility that court could avoid deciding question of whether federal government could constitutionally refuse to contribute to performance of certain abortions by construing local medical assistance plans or federal statute. *Doe v. Mathews*, 422 F. Supp. 141, 1976 U.S. Dist. LEXIS 12918 (1976), US Supreme Court certiorari dismissed by 434 U.S. 801, 98 S. Ct. 29, 54 L. Ed. 2d 60, 1977 U.S. LEXIS 2679 (1977).

Residents of District of Columbia and Virginia did not have standing to sue to enjoin Secretary of Health, Education and Welfare from complying with provision of federal appropriations statute prohibiting Secretary from

using any money appropriated to him to perform abortions except where the life of mother would be endangered if fetus were carried to term, in light of fact that plaintiffs did not demonstrate that officials of District of Columbia and Virginia would, or legally could, refuse to pay for abortions performed for reasons other than those specified in statute. U.S. Const. art. 3, § 1 et seq.; Departments of Labor and Health, Education and Welfare Appropriation Act, 1977, § 209, 90 Stat. 1418; Social Security Act, § 1901 et seq., 42 U.S.C. § 1396 et seq. *Doe v. Mathews*, 422 F. Supp. 141, 1976 U.S. Dist. LEXIS 12918 (1976), US Supreme Court certiorari dismissed by 434 U.S. 801, 98 S. Ct. 29, 54 L. Ed. 2d 60, 1977 U.S. LEXIS 2679 (1977).

§ 1-307.05. Children's Health Insurance Program.

(a) The Mayor may submit a state child health plan and modifications to the plan to the Secretary of the United States Department of Health and Human Services ("Secretary"), to enable the District to receive federal assistance under title XXI of the Social Security Act, approved August 5, 1997 (Pub.L. No. 105-33; 42 U.S.C. § 1397aa et seq.).

(b) The Mayor may take such action, in accordance with the rules issued by the Mayor pursuant to this part, as may be necessary to submit the plan to the Secretary and to establish and carry out the Children's Health Insurance Program.

(Oct. 20, 1999, D.C. Law 13-38, § 2203, 46 DCR 6373.)

Prior Codifications. — 1981 Ed., § 1-360.2.

Emergency legislation. — For temporary (90-day) addition of section, see § 2203 of the Service Improvement and Fiscal Year 2000

Budget Support Emergency Act of 1999 (D.C. Act 13-110, July 28, 1999, 46 DCR 6320).

Legislative history of Law 13-38. — For Law 13-38, see notes following § 1-301.91.

§ 1-307.06. Rulemaking authority.

The Mayor, pursuant to title 1 of the District of Columbia Administrative Procedures Act, approved October 21, 1968 (82 Stat. 1204; D.C. Code § 2-501et seq.), shall issue rules to implement the provisions of § 1-307.03, § 1-307.05, and this section.

(Oct. 20, 1999, D.C. Law 13-38, § 2204, 46 DCR 6373.)

Prior Codifications. — 1981 Ed., § 1-360.3.

Emergency legislation. — For temporary (90-day) addition of section, see § 2204 of the Service Improvement and Fiscal Year 2000 Budget Support Emergency Act of 1999 (D.C. Act 13-110, July 28, 1999, 46 DCR 6320).

Legislative history of Law 13-38. — For Law 13-38, see notes following § 1-301.91.

Delegation of Authority. — Delegation of Authority Pursuant to D.C. Law 13-38, the Medical Assistance Expansion Program Act of 1999, see Mayor's Order 2001-83, June 7, 2001 (48 DCR 5839).

Part B

FREE CLINIC LIABILITY INDEMNIFICATION ASSISTANCE PROGRAM.

§ 1-307.21. Definitions. [Expired].

Expired.

(Sept. 23, 1986, D.C. Law 6-155, § 2, 33 DCR 4809; Aug. 17, 1991, D.C. Law 9-41, § 2(a), (b), 38 DCR 4979; Mar. 2, 2007, D.C. Law 16-192, § 2182(a), 53 DCR 6899.)

Cross references. — Health care professional volunteer assistance protection, see § 7-402.

Section references. — This section is referred to in §§ 1-307.22 to 1-307.24.

Prior Codifications. — 1981 Ed., § 1-308.1.

Temporary Amendment of Section. — For temporary (225 day) extension of program, see § 2 of Free Clinic Assistance Program Extension Temporary Amendment Act of 2001 (D.C. Law 14-54, December 6, 2001, law notification 49 DCR 355).

Temporary Repeal of Section Section 17 of D.C. Law 17-63 repealed this section as of the date when the District of Columbia Free Clinic Captive Insurance Company becomes operational.

Section 19(b) of D.C. Law 17-63 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary extension of the Free Clinic Assistance Program Act of 1986 (D.C. Law 6-155) through the year 2001, see § 2 of the Free Clinic Assistance Program Extension Second Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-486, January 2, 1997, 44 DCR 632), and § 2 of the Free Clinic Assistance Program Extension Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-38, March 31, 1997, 44 DCR 2042).

For temporary (90 day) extension of the Free Clinic Assistance Program of 1986 (D.C. Law 6-155) until September 23, 2004, see § 2 of Free Clinic Assistance Program Extension Emergency Amendment Act of 2001 (D.C. Act 14-110, August 3, 2001, 48 DCR 7634), and § 2 of Free Clinic Assistance Program Extension Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-139, October 23, 2001, 48 DCR 9930).

For temporary (90 day) extension of program, see § 2(b) of Free Clinic Assistance Program Extension Emergency Amendment Act of 2002 (D.C. Act 14-407, July 10, 2002, 49 DCR 7109).

For temporary (90 day) extension of program, see § 2(b) of Free Clinic Assistance Program Extension Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-477, October 3, 2002, 49 DCR 9572).

For temporary (90 day) amendment of section, see § 2182(a) of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) amendment of section, see § 2182(a) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) amendment of section, see § 2182(a) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

Legislative history of Law 6-112. — Law 6-112 was introduced in Council and assigned Bill No. 6-382. This Bill was adopted on first and second readings on February 11, 1986 and February 25, 1986, respectively. Signed by the Mayor on March 11, 1986, it was assigned Act No. 6-142 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-155. — Law 6-155, the "Free Clinic Assistance Program Act of 1986," was introduced in Council and assigned Bill No. 6-466, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 24, 1986 and July 8, 1986, respectively. Signed by the Mayor on July 16, 1986, it was assigned Act No. 6-198 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-41. — Law 9-41 was introduced in Council and assigned Bill No. 9-42, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 4, 1991, and July 2, 1991, respectively. Signed by the Mayor on July 24, 1991, it was assigned Act No. 9-78 and transmitted to both Houses of Congress for its review.

Legislative history of Law 16-192. — For Law 16-192, see notes following § 1-307.02.

Short title. — Short title: Section 2181 of D.C. Law 16-192 provided that subtitle O of title II of the act may be cited as the “Free Clinic Assistance Program Coverage Amendment Act of 2006”.

Expiration of Law 6-155. — Section 7(b) of D.C. Law 6-155, as amended by § 2 of the Free Clinic Assistance Program Act of 1986 Amendment Emergency Act of 1988 (D.C. Act 7-203, June 30, 1988, 35 DCR 5439), § 2 of D.C. Law 7-172, § 2 of D.C. Law 7-223, § 4 of the Residential Property Tax Relief Act of 1977 Application Deadline and Free Clinic Assistance Pro-

gram Act of 1986 Extension Emergency Amendment Act of 1991 (D.C. Act 9-83, September 13, 1991, 38 DCR 6021), § 4 of D.C. Law 9-53, § 3 of D.C. Law 9-65, and by § 2 of D.C. Law 11-175 provided that the act shall expire 15 years from the day it became effective. D.C. Law 6-155 became effective September 23, 1986.

Editor’s notes. — Repeal of Part B: Section 16 of D.C. Law 17-196 provided: “The Free Clinic Assistance Program Act of 1986, effective September 23, 1986 (D.C. Law 6-155; D.C. Official Code § 1-307.21 et seq.), is repealed as of the date when the Agency becomes operational.”

§ 1-307.22. Establishment. [Expired].

Expired.

(Sept. 23, 1986, D.C. Law 6-155, § 3, 33 DCR 4809; Aug. 17, 1991, D.C. Law 9-41, § 2(c), 38 DCR 4979.)

Section references. — This section is referred to in §§ 1-307.21, 1-307.23, and 1-307.24.

Prior Codifications. — 1981 Ed., § 1-308.2.

Temporary Repeal of Section Section 17 of D.C. Law 17-63 repealed this section as of the date when the District of Columbia Free Clinic Captive Insurance Company becomes operational.

Section 19(b) of D.C. Law 17-63 provided that the act shall expire after 225 days of its having taken effect.

Legislative history of Law 6-155. — For legislative history of D.C. Law 6-155, see His-

torical and Statutory Notes following § 1-307.21.

Legislative history of Law 9-41. — For legislative history of D.C. Law 9-41, see Historical and Statutory Notes following § 1-307.21.

Expiration of Law 6-155. — See Historical and Statutory Notes following § 1-307.21.

Editor’s notes. — Repeal of Part B: Section 16 of D.C. Law 17-196 provided: “The Free Clinic Assistance Program Act of 1986, effective September 23, 1986 (D.C. Law 6-155; D.C. Official Code § 1-307.21 et seq.), is repealed as of the date when the Agency becomes operational.”

§ 1-307.23. Eligibility requirements. [Expired].

Expired.

(Sept. 23, 1986, D.C. Law 6-155, § 4, 33 DCR 4809; Mar. 2, 2007, D.C. Law 16-192, § 2182(b), 53 DCR 6899; Mar. 25, 2009, D.C. Law 17-353, § 136, 56 DCR 1117.)

Section references. — This section is referred to in §§ 1-307.21, 1-307.22, and 1-307.24.

Prior Codifications. — 1981 Ed., § 1-308.3.

Effect of amendments. — D.C. Law 17-353 validated a previously made technical correction.

Temporary Repeal of Section Section 17 of D.C. Law 17-63 repealed this section as of the date when the District of Columbia Free Clinic Captive Insurance Company becomes operational.

Section 19(b) of D.C. Law 17-63 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2182(b) of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) amendment of section, see § 2182(b) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) amendment of section, see § 2182(b) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

Legislative history of Law 6-155. — For legislative history of D.C. Law 6-155, see Historical and Statutory Notes following § 1-307.21.

Legislative history of Law 16-192. — For Law 16-192, see notes following § 1-307.02.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 1-129.05.

Expiration of Law 6-155. — See Historical and Statutory Notes following § 1-307.21.

Editor's notes. — Repeal of Part B: Section 16 of D.C. Law 17-196 provided: "The Free Clinic Assistance Program Act of 1986, effective September 23, 1986 (D.C. Law 6-155; D.C. Official Code § 1-307.21 et seq.), is repealed as of the date when the Agency becomes operational."

§ 1-307.23a. Establishment of working group to study program alternatives. [Expired].

Expired.

(Sept. 23, 1986, D.C. Law 6-155, § 4a, as added Apr. 8, 2005, D.C. Law 15-298, § 2(a), 52 DCR 1488.)

Legislative history of Law 15-298. — Law 15-298, the "Free Clinic Assistance Program Extension Amendment Act of 2004", was introduced in Council and assigned Bill No. 15-915, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 9, 2004, and December 7, 2004, respectively. Signed by the Mayor on December 29, 2004, it was assigned Act No. 15-694 and transmitted to both Houses

of Congress for its review. D.C. Law 15-298 became effective on April 8, 2005.

Editor's notes. — Repeal of Part B: Section 16 of D.C. Law 17-196 provided: "The Free Clinic Assistance Program Act of 1986, effective September 23, 1986 (D.C. Law 6-155; D.C. Official Code § 1-307.21 et seq.), is repealed as of the date when the Agency becomes operational."

§ 1-307.24. Rules. [Expired].

Expired.

(Sept. 23, 1986, D.C. Law 6-155, § 5, 33 DCR 4809.)

Section references. — This section is referred to in §§ 1-307.21 to 1-307.23.

Prior Codifications. — 1981 Ed., § 1-308.4.

Temporary Repeal of Section Section 17 of D.C. Law 17-63 repealed this section as of the date when the District of Columbia Free Clinic Captive Insurance Company becomes operational.

Section 19(b) of D.C. Law 17-63 provided that the act shall expire after 225 days of its having taken effect.

Legislative history of Law 6-155. — For legislative history of D.C. Law 6-155, see Historical and Statutory Notes following § 1-307.21.

Expiration of Law 6-155. — See Historical and Statutory Notes following § 1-307.21.

Delegation of Authority. — Delegation of authority pursuant to Law 6-155, "Free Clinic Assistance Program Act of 1986", see Mayor's Order 87-32, February 5, 1987.

Delegation of authority, see Mayor's Order 88-100, April 26, 1988.

Editor's notes. — Repeal of Part B: Section 16 of D.C. Law 17-196 provided: "The Free Clinic Assistance Program Act of 1986, effective September 23, 1986 (D.C. Law 6-155; D.C. Official Code § 1-307.21 et seq.), is repealed as of the date when the Agency becomes operational."

§ 1-307.25. Applicability. [Expired].

Expired.

(Sept. 23, 1986, D.C. Law 6-155, § 5a, as added Oct. 17, 2002, D.C. Law 14-196, § 2(a), 49 DCR 7640.)

Emergency legislation. — For temporary (90 day) addition of § 1-307.25 and new codification of § 1-307.26, see § 2(a) of Free Clinic Assistance Program Extension Emergency Amendment Act of 2002 (D.C. Act 14-407, July 10, 2002, 49 DCR 7109).

For temporary (90 day) addition of § 1-307.25 and new codification of § 1-307.26, see § 2(a) of Free Clinic Assistance Program Extension Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-477, October 3, 2002, 49 DCR 9572).

Legislative history of Law 14-196. — Law 14-196, the “Free Clinic Assistance Program Extension Amendment Act of 2002”, was introduced in Council and assigned Bill No. 14-296,

which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 18, 2002, and July 2, 2002, respectively. Signed by the Mayor on July 17, 2002, it was assigned Act No. 14-429 and transmitted to both Houses of Congress for its review. D.C. Law 14-196 became effective on October 17, 2002.

Editor's notes. — Repeal of Part B: Section 16 of D.C. Law 17-196 provided: “The Free Clinic Assistance Program Act of 1986, effective September 23, 1986 (D.C. Law 6-155; D.C. Official Code § 1-307.21 et seq.), is repealed as of the date when the Agency becomes operational.”

§ 1-307.26. Expiration [Expired].

Expired.

(Sept. 23, 1986, D.C. Law 6-155, § 7(b); Oct. 17, 2002, D.C. Law 14-196, § 2(b), 49 DCR 7640; Apr. 8, 2005, D.C. Law 15-298, § 2(b), 52 DCR 1488.)

Temporary Amendment of Section. — Section 2 of D.C. Law 17-50 substituted “the earlier of October 1, 2008, or the date that a captive insurance company, to be formed at the direction of the Department of Insurance, Securities, and Banking, certifies to the Mayor and the Council that it will offer medical liability insurance to free clinics” for “October 1, 2007”.

Section 4(b) of D.C. Law 17-50 provided that the act shall expire after 225 days of its having taken effect.

Temporary Addition of Section. — For temporary (225 day) addition, see § 2 of Free Clinic Assistance Program Extension Temporary Amendment Act of 2004 (D.C. Law 15-210, December 7, 2004, law notification 52 DCR 454).

Temporary Repeal of Section Section 17 of D.C. Law 17-63 repealed this section as of the date when the District of Columbia Free Clinic Captive Insurance Company becomes operational.

Section 19(b) of D.C. Law 17-63 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition of § 1-307.25 and new codification of § 1-307.26, see § 2(a) of Free Clinic Assistance Program Extension Emergency Amendment Act of 2002 (D.C. Act 14-407, July 10, 2002, 49 DCR 7109).

For temporary (90 day) addition of § 1-307.25 and new codification of § 1-307.26, see

§ 2(a) of Free Clinic Assistance Program Extension Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-477, October 3, 2002, 49 DCR 9572).

For temporary (90 day) amendment of section, see § 2 of Free Clinic Assistance Program Extension Emergency Amendment Act of 2004 (D.C. Act 15-484, July 19, 2004, 51 DCR 7838).

For temporary (90 day) amendment of section, see § 2 of Free Clinic Assistance Program Extension Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-556, October 26, 2004, 51 DCR 10370).

For temporary (90 day) amendment of section, see § 2 of Free Clinic assistance Program Extension Emergency Amendment Act of 2007 (D.C. Act 17-79, July 26, 2007, 54 DCR 7634).

For temporary (90 day) amendment of section, see § 2 of Free Clinic Assistance Program Extension Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-233, December 27, 2007, 55 DCR 236).

Legislative history of Law 14-196. — For Law 14-196, see notes following § 1-307.25.

Legislative history of Law 15-298. — For Law 15-298, see notes following § 1-307.23a.

Editor's notes. — Section 2 of D.C. Law 17-50 provided that this part shall expire the earlier of October 1, 2008, or the date that a captive insurance company, to be formed at the direction of the Department of Insurance, Securities, and Banking, certifies to the Mayor and the Council that it will offer medical liability insurance to free clinics. Sections 1-307.21

to 1-307.26 expired on June 6, 2008, upon the expiration of D.C. Law 17-50.

Repeal of Part B: Section 16 of D.C. Law 17-196 provided: "The Free Clinic Assistance

Program Act of 1986, effective September 23, 1986 (D.C. Law 6-155; D.C. Official Code § 1-307.21 et seq.), is repealed as of the date when the Agency becomes operational."

Part C

MEDICAL BENEFITS PROTECTION.

§ 1-307.41. Insurer obligations.

(a) No insurer may deny coverage or withhold payments under its plan for any enrollee, subscriber, policyholder, or certificateholder on the basis that such enrollee, subscriber, policyholder, or certificateholder is eligible for Medicaid pursuant to a Medicaid state plan adopted by the District of Columbia or any other jurisdiction pursuant to § 1902 of the Social Security Act (79 Stat. 344; 42 U.S.C. § 1396a).

(b) No insurer may deny enrollment of a child under the health plan of the child's parent on the grounds that:

(1) The child was born out of wedlock;

(2) The child is not claimed as a dependent on the parent's federal income tax return; or

(3) The child does not reside with the parent or in the insurer's service area.

(c) Where a child has health coverage through an insurer of a noncustodial parent, the insurer shall:

(1) Provide such information to the custodial parent as may be necessary to obtain benefits through such coverage, including the information required under § 46-251.05(a).

(2) Permit the custodial parent (or the provider, with the custodial parent's approval) to submit claims for covered services without the approval of the noncustodial parent; and

(3) Make payments on claims submitted in accordance with paragraph (2) of this subsection directly to the custodial parent, the provider, or the District of Columbia Medicaid agency.

(d) Where a parent is required by a court or administrative order to provide health coverage for a child, and the parent is eligible for family health coverage, the insurer shall:

(1) Permit the parent to enroll, under the family coverage, a child who is otherwise eligible for the coverage without regard to any enrollment season restrictions;

(2) Enroll the child under family coverage upon application by the child's other parent, or by the District of Columbia agency administering either the Medicaid program or the child support enforcement program pursuant to Title IV-D of the Social Security Act (88 Stat. 2351; 42 U.S.C. §§ 652 through 669), if the employed parent is enrolled but fails to make application to obtain coverage of the child;

(2A) Enroll the child and the employed parent under family coverage upon application by the child's other parent, or by the District of Columbia agency administering either the Medicaid program or the child support enforcement program pursuant to Part D of Title IV of the Social Security Act, approved January 4, 1975 (88 Stat. 2351; 42 U.S.C. § 651 et seq.), if the employed parent is not enrolled and the health insurance plan requires the employed parent's enrollment for the child to be eligible; and

(3) Not disenroll (or eliminate coverage of) the child unless the insurer is provided satisfactory written evidence that:

(A) The court or administrative order is no longer in effect; or

(B) The child is or will be enrolled in comparable health coverage through another insurer which will take effect not later than the effective date of disenrollment.

(e) As a condition of doing business in the District:

(1) An insurer shall not impose requirements on a District of Columbia agency that has been assigned the rights of an individual eligible for medical assistance under the District State Medicaid Plan and covered for health benefits from the insurer that are different from requirements applicable to an agent or assignee of any other individual so covered.

(2) An insurer shall:

(A) Accept the District's right of recovery and the assignment to the District of any right of an individual or other entity to payment from the insurer for an item or service for which payment has been made under the District State Medicaid Plan;

(B) Respond to any inquiry by the District, or its agent, regarding a claim for payment for a health care item or service that the District submits within 3 years after the date that the health-care item or service was provided;

(C) Not deny a claim submitted by the District because of the date of submission of the claim, the type or format of the claim form, or for failure to present proper documentation at the point-of-sale that is the basis of the claim; provided, that the District:

(i) Submits the claim within the 3-year period beginning on the date of which the item or service was furnished; and

(ii) Commences an action to enforce its right with respect to the claim within 6 years of submitting the claim; and

(D) Upon the request of the Mayor, in a manner prescribed by the Mayor, provide coverage, eligibility, and paid claims data to the District, or its agent, to determine the period that individuals who received, or were eligible for, health care assistance were, or could have been, covered by an insurer and the nature of the coverage that is being, or was, provided by the health insurer. The data to be provided shall include:

(i) Each individual's:

(I) Name;

(II) Address; and

(III) Plan identification number; and

(ii) Any other information prescribed by the Mayor.

(f) For the purposes of this section, the term "insurer" includes a self-insured plan, a group health plan, as defined in section 607(1) of the Employee

Retirement Income Security Act of 1974, approved April 7, 1986 (100 Stat. 231; 29 U.S.C. 1167(1)), a service benefit plan, a managed care organization, a pharmacy benefit manager, or other party that is, by statute, contract, or agreement, legally responsible for payment of a claim for all or part of a health-care item or service.

(Mar. 14, 1995, D.C. Law 10-202, § 2, 41 DCR 7704; Mar. 30, 2004, D.C. Law 15-130, § 201(a), 51 DCR 1615; Mar. 25, 2009, D.C. Law 17-353, § 304, 56 DCR 1117; Sept. 24, 2010, D.C. Law 18-223, § 5102, 57 DCR 6242.)

Prior Codifications. — 1981 Ed., § 1-359.1.

Effect of amendments. — D.C. Law 15-130, in subsec. (c)(1), deleted “for the child” following “may be necessary”, and inserted “, including the information required under § 46-251.05(a)”; and, in subsec. (d), deleted “and” from the end of par. (2), and added par. (2A).

D.C. Law 17-353, in subsec. (f), substituted “member insurer” for “hospital and medical service plan”.

D.C. Law 18-223 rewrote subssecs. (e) and (f), which had read as follows:

“(e) An insurer may not impose requirements on a District of Columbia agency, which has been assigned the rights of an individual eligible for medical assistance under Medicaid and covered for health benefits from the insurer, that are different from requirements applicable to an agent or assignee of any other individual so covered.

“(f) For purposes of this section, the term ‘insurer’ includes a group health plan, as defined in section 607(1) of the Employee Retirement Income Security Act of 1974 (100 Stat. 231; 29 U.S.C. § 1167(1)), a public or private organization which is a qualifying health maintenance organization under federal regulations, or a member insurer as defined in § 31-5401(8).”

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 201(a) of Medical Support Establishment and Enforcement Temporary Amendment Act of 2002 (D.C. Law 14-238, March 25, 2003, law notification 50 DCR 2751).

For temporary (225 day) amendment of section, see § 201(a) of Medical Support Establishment and Enforcement Temporary Amendment Act of 2003 (D.C. Law 15-84, March 10, 2004, law notification 51 DCR 3376).

Section 1002 of D.C. Law 18-222 rewrote subssecs. (e) and (f) to read as follows:

“(e) As a condition of doing business in the District:

“(1) An insurer shall not impose requirements on a District of Columbia agency that has been assigned the rights of an individual eligible for medical assistance under the District State Medicaid Plan and covered for

health benefits from the insurer that are different from requirements applicable to an agent or assignee of any other individual so covered; and

“(2) An insurer shall:

“(A) Accept the District’s right of recovery and the assignment to the District of any right of an individual or other entity to payment from the insurer for an item or service for which payment has been made under the District State Medicaid Plan;

“(B) Respond to any inquiry by the District, or its agent, regarding a claim for payment for a health care item or service that the District submits within 3 years after the date that the health care item or service was provided; and

“(C) Not deny a claim submitted by the District because of the date of submission of the claim, the type or format of the claim form, or for failure to present proper documentation at the point-of-sale that is the basis of the claim; provided, that:

“(i) The District submits the claim within the 3-year period beginning on the date of which the item or service was furnished; and

“(ii) The District commences an action to enforce its right with respect to the claim within 6 years of submitting the claim; and

“(D) Upon the request of the Mayor, in a manner prescribed by the Mayor, provide coverage, eligibility, and paid claims data to the District, or its agent, to determine the period that individuals who received, or were eligible for, health care assistance were, or could have been, covered by an insurer and the nature of the coverage that is being, or was, provided by the health insurer. The data to be provided shall include:

“(i) Each individual’s:

“(I) Name;

“(II) Address; and

“(III) Plan identification number; and

“(ii) Any other information prescribed by the Mayor.”

“(f) For the purposes of this section, the term ‘insurer’ includes a self-insured plan, a group health plan, as defined in section 607(1) of the Employee Retirement Income Security Act of 1974, approved April 7, 1986 (100 Stat. 231; 29 U.S.C. 1167(1)), a service benefit plan, a managed care organization, a pharmacy benefit

manager, or other party that is, by statute, contract, or agreement, legally responsible for payment of a claim for all or part of a health care item or service.”.

Section 2002(b) of D.C. Law 18-222 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 201(a) of Medical Support Establishment and Enforcement Emergency Amendment Act of 2002 (D.C. Act 14-485, October 3, 2002, 49 DCR 9631).

For temporary (90 day) amendment of section, see § 201(a) of Medical Support Establishment and Enforcement Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-600, January 7, 2003, 50 DCR 664).

For temporary (90 day) amendment of section, see § 201(a) of Medical Support Establishment and Enforcement Emergency Amendment Act of 2003 (D.C. Act 15-208, October 24, 2003, 50 DCR 9856).

For temporary (90 day) amendment of section, see § 201(a) of Medical Support Establishment and Enforcement Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-330, January 28, 2004, 51 DCR 1603).

For temporary (90 day) amendment of section, see § 1002 of Fiscal Year 2010 Balanced Budget Support Emergency Act of 2010 (D.C. Act 18-450, June 28, 2010, 57 DCR 5635).

For temporary (90 day) amendment of section, see § 1002 of Fiscal Year 2010 Balanced Budget Support Congressional Review Emergency Act of 2010 (D.C. Act 18-531, August 6, 2010, 57 DCR 8109).

For temporary (90 day) amendment of section, see § 5102 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 10-202. — Law 10-202, the “Medicaid Benefits Protection Act of 1994,” was introduced in Council and assigned Bill No. 10-584, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on October 4, 1994, and November 1, 1994, respectively. Signed by the Mayor on November 22, 1994, it was assigned Act No. 10-340 and transmitted to both Houses of Congress for its review. D.C. Law 10-202 became effective on March 14, 1995.

Legislative history of Law 15-130. — Law 15-130, the “Medical Support Establishment and Enforcement Amendment Act of 2004,” was introduced in Council and assigned Bill No. 15-219, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 2, 2003, and January 6, 2004, respectively. Signed by the Mayor on January 28, 2004, it was assigned Act No. 15-331 and transmitted to both Houses of Congress for its review. D.C. Law 15-130 became effective on March 30, 2004.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 1-129.05.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 1-301.78.

Short title. — Short title: Section 5101 of D.C. Law 18-223 provided that subtitle K of title V of the act may be cited as the “Medicaid Benefits Protection Amendment Act of 2010”.

§ 1-307.42. Employer obligations.

Where a parent is required by a court or administrative order to provide health coverage, which is available through the parent’s employer, the employer shall:

(1) Permit the parent to enroll under family coverage any child who is otherwise eligible for coverage without regard to any enrollment restrictions;

(2) Enroll the child under family coverage upon application by the child’s other parent, or by the District of Columbia agency administering either the Medicaid program or the child support enforcement program pursuant to Title IV-D of the Social Security Act (88 Stat. 2351; 42 U.S.C. § 651 through 669), if the parent is enrolled but fails to make application to obtain coverage of the child;

(2A) Enroll the child and the employed parent under family coverage upon application by the child’s other parent, or by the District of Columbia agency administering either the Medicaid program or the child support enforcement program pursuant to Part D of Title IV of the Social Security Act, approved January 4, 1975 (88 Stat. 2351; 42 U.S.C. § 651 et seq.), if the employed parent is not enrolled and the health insurance plan requires the employed parent’s enrollment for the child to be eligible;

(3) Not disenroll or eliminate coverage of any such child unless the employer is provided satisfactory written evidence that:

(A) The court order is no longer in effect;

(B) The child is or will be enrolled in comparable coverage which will take effect no later than the effective date of disenrollment;

(C) The employer has eliminated family health coverage for all its employees; or

(D) The employer no longer employs the parent and the parent has not elected to continue coverage through a plan offered by the employer for post-employment health insurance coverage for dependents;

(4) Subject to §§ 46-251.07 and 46-251.08, withhold from the employee's compensation the employee's share (if any) of premiums for health coverage and to pay this amount to the insurer, except that the maximum amount so withheld may not exceed the maximum amount to be withheld under § 303(b) of the Consumer Credit Protection Act (82 Stat. 163; 15 U.S.C. § 1673(b));

(5) Upon receipt of a court or administrative order that has directed the parent to provide health insurance coverage for the child, provide the insurer with the order for health insurance coverage and inform the insurer that the order operates to enroll the child in the coverage; and

(6) Upon receipt of a medical support notice issued by the IV-D agency under § 46-251.02, comply with the provisions of §§ 46-251.04, 46-251.07, and 46-251.08.

(Mar. 14, 1995, D.C. Law 10-202, § 3, 41 DCR 7704; Apr. 3, 2001, D.C. Law 13-269, § 102, 48 DCR 1270; Mar. 30, 2004, D.C. Law 15-130, § 201(b), 51 DCR 1615.)

Prior Codifications. — 1981 Ed., § 1-359.2.

Effect of amendments. — D.C. Law 13-269, in par. 3(C), deleted "and" at the end; in par. (4), substituted "; and" for a period at the end; and added par. (5).

D.C. Law 15-130, added pars. (2A), (3)(D), and (6); in par. (3), deleted "or" from the end of subpar. (B), and added "or" to the end of subpar. (C); in par. (4), substituted "Subject to §§ 46-251.07 and 46-251.08, withhold" for "Withhold"; and rewrote par. (5) which had read:

"(5) Inform the health insurance provider, upon receipt of notice indicating that a court or administrative order has directed the parent to provide health insurance coverage for the child, that receipt of the notice by the employer operates to enroll the child in the health insurance plan, unless the parent contests the notice in accordance with rules adopted by the Mayor or the Superior Court."

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-103, May 8, 1998, law notification 45 DCR 3254).

For temporary (225 day) amendment of section,

see § 2 of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) amendment of section, see § 102 of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) amendment of section, see § 102 of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

For temporary (225 day) amendment of section, see § 201(b) of Medical Support Establishment and Enforcement Temporary Amendment Act of 2002 (D.C. Law 14-238, March 25, 2003, law notification 50 DCR 2751).

For temporary (225 day) amendment of section, see § 201(b) of Medical Support Establishment and Enforcement Temporary Amendment Act of 2003 (D.C. Law 15-84, March 10, 2004, law notification 51 DCR 3376).

Emergency legislation. — For temporary amendment of section, see § 2 of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act

12-222, December 23, 1997, 44 DCR 114), § 2 of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 2 of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 2 of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, November 2, 1998, 45 DCR 8495), and § 2 of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary (90-day) amendment of section, see § 102 of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 102 of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) amendment of section, see § 102 of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) amendment of section, see § 102 of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) amendment of section, see § 102 of Child Support and Welfare Reform Compliance Congressional Review

Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

For temporary (90 day) amendment of section, see § 201(b) of Medical Support Establishment and Enforcement Emergency Amendment Act of 2002 (D.C. Act 14-485, October 3, 2002, 49 DCR 9631).

For temporary (90 day) amendment of section, see § 201(b) of Medical Support Establishment and Enforcement Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-600, January 7, 2003, 50 DCR 664).

For temporary (90 day) amendment of section, see § 201(b) of Medical Support Establishment and Enforcement Emergency Amendment Act of 2003 (D.C. Act 15-208, October 24, 2003, 50 DCR 9856).

For temporary (90 day) amendment of section, see § 201(b) of Medical Support Establishment and Enforcement Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-330, January 28, 2004, 51 DCR 1602).

Legislative history of Law 10-202. — For legislative history of D.C. Law 10-202, see Historical and Statutory Notes following § 1-307.41.

Legislative history of Law 13-269. — Law 13-269, the “Child Support and Welfare Reform Compliance Amendment Act of 2000”, was introduced in Council and assigned Bill No. 13-254, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 8, 2000, and December 5, 2000, respectively. Signed by the Mayor on January 8, 2001, it was assigned Act No. 13-559 and transmitted to both Houses of Congress for its review. D.C. Law 13-269 became effective on April 3, 2001.

Legislative history of Law 15-130. — For Law 15-130, see notes following § 1-307.41.

§ 1-307.43. Recoupment of amounts spent on child medical care.

(a) The Mayor may garnish wages, salary, or other employment income of, and intercept, in accordance with procedures set forth in § 47-1812.11 [repealed], any amounts from District of Columbia tax payable to, any person who:

(1) Is required by court or administrative order to provide coverage of the cost of health services to a child who is eligible for Medicaid; and

(2) Has received payment from a third party for the costs of such services, but has not used the payments to reimburse either the other parent or guardian of the child or the provider of the services.

(b) A garnishment or tax intercept effectuated pursuant to subsection (a) of this section shall be effected only to the extent necessary to reimburse the District of Columbia Medicaid agency for its cost under the state plan, but claims for current and past due child support shall take priority over these claims.

(Mar. 14, 1995, D.C. Law 10-202, § 4, 41 DCR 7704.)

Prior Codifications. — 1981 Ed., § 1-359.3. legislative history of D.C. Law 10-202, see Historical and Statutory Notes following § 1-307.41.
Legislative history of Law 10-202. — For

Part D

OPPORTUNITY ACCOUNTS.

§ 1-307.61. Definitions.

For the purposes of this part, the term:

- (1) “Account holder” means a person who is the owner of an opportunity account.
- (2) “Administering organization” means an entity that is approved by the Mayor to implement and administer an opportunity account program.
- (3) “District of Columbia median income” means the most recent measurement of median income for the District of Columbia published by the United States Department of Housing and Urban Development.
- (4) “Financial institution” means a bank, trust company, savings bank, credit union, or savings and loan association with an office in the District of Columbia.
- (5) “Medical emergency” means a debilitating or life-threatening illness.
- (6) “Opportunity account” means a special savings account established under this part.
- (7) “Opportunity Account Office” means the special savings account office established under § 1-307.62.
- (8) “Opportunity account program” means a program of an administering organization to administer and oversee opportunity accounts and to encourage the establishment of opportunity accounts.
- (9) “Opportunity account reserve fund” means the fund created by an administering organization for the purposes of funding the costs incurred in the administration of an opportunity account program and for providing matching funds for opportunity accounts.
- (10) “Retirement” means the period commencing upon the eligibility of a person for Social Security benefits.

(Apr. 3, 2001, D.C. Law 13-266, § 2, 48 DCR 1240.)

Legislative history of Law 13-266. — Law 13-266, the “Opportunity Accounts Act of 2000”, was introduced in Council and assigned Bill No. 13-33, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on November 8, 2000, and December 5, 2000, respectively. Signed by the Mayor on January 5, 2001, it was

assigned Act No. 13-556 and transmitted to both Houses of Congress for its review. D.C. Law 13-266 became effective on April 3, 2001.

Delegation of Authority. — Delegation of Authority Pursuant to D.C. Law 13-266, the “Opportunity Accounts Act of 2002”, see Mayor’s Order 2002-45, March 8, 2002 (49 DCR 2252).

§ 1-307.62. Establishment of Opportunity Account Office.

The Mayor shall establish in the executive branch an office to be known as the Opportunity Account Office. The office shall:

- (1) Provide eligible families and individuals with an opportunity to establish opportunity accounts;
- (2) Provide that the opportunity account shall be established by an approved financial institution and administered by an approved organization;
- (3) Provide incentives to encourage participation in the program; and
- (4) Require that money deposited into an opportunity account shall be used only for approved purposes.

(Apr. 3, 2001, D.C. Law 13-266, § 3, 48 DCR 1240.)

Legislative history of Law 13-266. — For Law 13-266, see notes following § 1-307.61.

§ 1-307.63. Solicitation and consideration of proposals by organizations to administer opportunity account programs.

(a) The Mayor shall solicit proposals from private organizations to administer opportunity accounts on a nonprofit basis. Organization proposals shall include:

- (1) A description of the qualifications of the organization to administer an opportunity accounts program;
- (2) A description of the ability and plans of the organization to provide or raise sufficient funds to provide matching contributions for opportunity accounts;
- (3) A description of the ability of the organization to maintain sufficient funds to administer an opportunity account program;
- (4) A description of groups to be targeted for priority participation in the opportunity account program;
- (5) A process for including account holders in decision-making regarding the implementation of the opportunity account program;
- (6) A requirement that an account holder contribute funds from earned income;
- (7) A requirement that the account holder attend economic literacy courses of the administering organization or a partner organization;
- (8) A requirement that the account holder be provided adequate information on the requirements of the opportunity account program and this part and the purposes for which opportunity account and matching fund account funds may be used;
- (9) A process for offering or making available courses or training on the use of funds for an approved purpose, such as a home purchase or the establishment of a business;
- (10) A process for regular evaluation and review of opportunity accounts to ensure compliance with this part, District of Columbia regulations, and

program rules by account holders and a process for counseling account holders who are not in compliance;

(11) A system for preventing withdrawal of matching funds for a purpose other than an approved purpose by maintaining the matching funds in a matching funds account separate from the opportunity account; and

(12) Other information as may be required by the Mayor.

(b) In reviewing proposals of organizations to administer opportunity accounts, the Mayor shall consider the following factors:

(1) Whether the organization is exempt from taxation under section 501(c)(3) of the Internal Code of 1986, approved October 22, 1986 (68A Stat. 163; 26 U.S.C. § 501(c)(3));

(2) The administrative and technical ability of the organization to administer an opportunity account program;

(3) The fiscal accountability of the organization;

(4) The ability of the organization to provide or raise money for matching contributions;

(5) The ability of the organization to establish and administer an opportunity account reserve fund to receive contributions from opportunity account program contributors;

(6) The amount and quality of proposed auxiliary services, including economic literacy seminars and asset training;

(7) The staffing that the organization will assign to the opportunity account program;

(8) The record of the organization in administering other public assistance programs; and

(9) Any other factors the Mayor considers relevant to the determination of the ability of the organization to create and operate an opportunity account program efficiently and effectively.

(Apr. 3, 2001, D.C. Law 13-266, § 4, 48 DCR 1240; June 12, 2003, D.C. Law 14-310, § 2(a), 50 DCR 1092.)

Effect of amendments. — D.C. Law 14-310, in subsec. (b), validated a previously made technical correction.

Legislative history of Law 13-266. — For Law 13-266, see notes following § 1-307.61.

Legislative history of Law 14-310. — Law 14-310, the “Criminal Code and Miscellaneous Technical Amendments Act of 2002”, was introduced in Council and assigned Bill No. 14-954,

which was referred to the Committee on Whole. The Bill was adopted on first and second readings on December 3, 2002, and December 17, 2002, respectively. Signed by the Mayor on January 22, 2003, it was assigned Act No. 14-622 and transmitted to both Houses of Congress for its review. D.C. Law 14-310 became effective on June 12, 2003.

§ 1-307.64. Responsibilities of administering organization.

An administering organization shall:

(1) Administer opportunity accounts in accordance with this part and all rules promulgated under this part and in conformity with the organization’s application as approved by the Mayor;

(2) Establish an opportunity account reserve fund account at a financial

institution and deposit into that account sufficient funds to administer the organization's opportunity account program and to provide potential matching funds for opportunity accounts in the organization's opportunity account program; and

(3) Review and approve expenditures of opportunity account funds to ensure that the expenditures are used for a purpose permitted under this part.

(Apr. 3, 2001, D.C. Law 13-266, § 5, 48 DCR 1240.)

Legislative history of Law 13-266. — For Law 13-266, see notes following § 1-307.61.

§ 1-307.65. Financial institution establishment of opportunity accounts.

(a) A financial institution shall not establish an opportunity account for an account holder unless the establishment of the account by the financial institution is approved by the Mayor. The Mayor may grant general approval to a financial institution to establish an opportunity account for any person meeting specified standards.

(b) A financial institution may establish an opportunity account reserve fund account if the establishment of the account by the financial institution is approved by the Mayor. The Mayor may grant general approval to a financial institution to establish an opportunity account reserve fund account for any organization meeting specified standards.

(c) A financial institution establishing an opportunity account shall certify to the Mayor, on a form to be prescribed by the Mayor and accompanied by any documentation required by the Mayor, that an opportunity account has been established and that funds have been deposited into the account.

(d) A financial institution establishing an opportunity account reserve fund account shall certify to the Mayor, on a form to be prescribed by the Mayor and accompanied by any documentation required by the Mayor, that an opportunity account reserve fund account has been established and that funds have been deposited into the account.

(e) A financial institution establishing an opportunity account shall:

(1) Maintain the account in the name of the account holder alone or in a subaccount of an escrow or custodial account in the name of the administering organization;

(2) Permit deposits to be made in the account by the account holder or an organization on behalf of the account holder;

(3) Provide at least the market rate of interest for the account; and

(4) Permit the account holder, or, if in an escrow or custodial account, the administering organization, to withdraw money from the account.

(Apr. 3, 2001, D.C. Law 13-266, § 6, 48 DCR 1240; June 12, 2003, D.C. Law 14-310, § 2(b), 50 DCR 1092.)

Effect of amendments. — D.C. Law 14-310 rewrote par. (4) of subsec. (e) which had read as follows: "(4) Permit the account holder or, if in

an escrow or custodial account, the administering organization to withdraw money from the account."

Legislative history of Law 13-266. — For Law 13-266, see notes following § 1-307.61.

Legislative history of Law 14-310. — For Law 14-310, see notes following § 1-307.63.

§ 1-307.66. Eligibility to open an opportunity account; account limit.

(a) An individual whose household income does not exceed 85% of the District of Columbia median income may open an opportunity account.

(b) The total balance in an opportunity account, except interested earned on matching funds or funds deposited into the account by the account holder, shall not exceed \$10,000.

(Apr. 3, 2001, D.C. Law 13-266, § 7, 48 DCR 1240.)

Legislative history of Law 13-266. — For Law 13-266, see notes following § 1-307.61.

§ 1-307.67. Matching funds and return of matching funds; tax exemption.

(a) The administering organization shall deposit into a matching funds account for the account holder matching funds of at least \$2 for every dollar that the account holder deposits into the account.

(b) Subject to annual available appropriations, the District of Columbia shall provide to an administering organization matching funds of \$2, to be deposited into the matching funds account for the account holder, for every dollar that the account holder deposits into the opportunity account; provided that:

(1) The District of Columbia shall not provide matching funds for the account unless the administering organization provides matching funds in at least the same amount; and

(2) The District of Columbia shall provide no more than \$3,000 in the aggregate in matching funds per account.

(c) There shall be no limit on federal or private matching funds made available to an account holder.

(d) Subject to annual available appropriations, matching funds deposited into a matching funds account or withdrawn by an account holder from a matching funds account shall be exempt from taxation under District of Columbia law; provided, that any money withdrawn from a matching funds account by an account holder for an unapproved use shall be taxed as income to the account holder, unless the funds are reinstated in accordance with § 1-307.68(d).

(e) The administering organization shall deposit matching funds in an account separate from the opportunity account. The separate account may be the opportunity account reserve fund account.

(f) Except for matching funds used for an approved purpose under § 1-307.68(a) before 10 years after the establishment of the opportunity account, the matching funds shall be returned to the District of Columbia and administering organization in the same amounts as the matching funds were provided 10 years after the establishment of the opportunity account.

(Apr. 3, 2001, D.C. Law 13-266, § 8, 48 DCR 1240; June 19, 2001, D.C. Law 13-313, § 26(a), (b), 48 DCR 1873; Oct. 26, 2001, D.C. Law 14-42, § 17, 48 DCR 7612; Mar. 3, 2010, D.C. Law 18-111, § 7036, 57 DCR 181.)

Effect of amendments. — D.C. Law 14-42 validated a previously made technical correction in subsec. (d).

D.C. Law 13-313, rewrote subsec. (d); and, in subsec. (f), substituted “Except for matching funds used for an approved purpose under § 1-307.68(a) before 10 years after the establishment of the opportunity account,” for “Except for matching funds used to purchase a federally qualified individual retirement account as permitted under § 1-307.68(a)(8)”. Prior to amendment, subsec. (d) read:

“(d) Subject to appropriations, matching funds deposited into a matching funds account or withdrawn by an account holder from a matching funds account shall be exempt from taxation under District of Columbia law; provided, that:

“(1) Interest earned on the matching funds shall not be exempt from taxation; and

“(2) Any money withdrawn from a matching funds account for an unapproved use shall be taxed as income unless it is reinstated in the account as provided in section 9(d).”

D.C. Law 18-111, in subsecs. (b) and (d), substituted “Subject to annual available appropriations” for “Subject to appropriations”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 17 of Technical Amendments Emergency Act of 2001 (D.C. Act 14-108, August 3, 2001, 48 DCR 7622).

For temporary (90 day) amendment of section, see § 7036 of Fiscal Year 2010 Budget

Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 7036 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 14-42. — Law 14-42, the “Technical Amendments Act of 2001”, was introduced in Council and assigned Bill No. 14-216, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 5, 2001, and June 26, 2001, respectively. Signed by the Mayor on July 24, 2001, it was assigned Act No. 14-107 and transmitted to both Houses of Congress for its review. D.C. Law 14-42 became effective on October 26, 2001.

Legislative history of Law 13-266. — For Law 13-266, see notes following § 1-307.61.

Legislative history of Law 13-313. — Law 13-313, the “Technical Amendment Act of 2000”, was introduced in Council and assigned Bill No. 13-879, which was referred to the Committee on the Whole. The Bill was adopted on first and second readings on December 5, 2000, and December 19, 2000, respectively. Signed by the Mayor on January 19, 2001, it was assigned Act No. 13-574 and transmitted to both Houses of Congress for its review. D.C. Law 13-313 became effective on June 19, 2001.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 1-301.181.

§ 1-307.68. Use of opportunity account funds.

(a) An account holder may withdraw his or her opportunity account funds or matching funds for any of the following purposes, if approved by the administering organization:

(1) To pay educational costs for the account holder or a spouse, domestic partner, father, mother, child, or dependent of the account holder at an accredited institution of higher education;

(2) To pay job training costs for the account holder or a spouse, domestic partner, father, mother, child, or dependent of the account holder at an accredited or licensed training program;

(3) To purchase a primary residence;

(4) To pay for major repairs or improvements to a primary residence;

(5) To fund start-up costs of a business for the account holder or a spouse, domestic partner, father, mother, child, or dependent of the account holder;

(6) To pay for costs associated with a medical emergency, to the extent that those costs are not covered by insurance;

(7) To pay for costs and expenses incurred during retirement;

(8) To purchase a federally qualified individual retirement account if such purchase takes place not earlier than 5 years after the establishment of the opportunity account.

(b) If an account holder withdraws opportunity account funds or matching funds for a purpose not allowed by this part: (1) the account holder shall lose his or her matching funds and the matching funds shall be returned to the District of Columbia and administering organization in the same amounts as the matching funds were provided; (2) the account holder shall be removed from the opportunity account program; and (3) all funds deposited by the account holder into the opportunity account shall be returned to the account holder. The Mayor may establish, by rule, an opportunity for an account holder to reinstate funds to his or her opportunity account or matching funds account after an unlawful withdrawal before the penalties in this subsection shall take effect.

(Apr. 3, 2001, D.C. Law 13-266, § 9, 48 DCR 1240; June 19, 2001, D.C. Law 13-313, § 26(c), (d), 48 DCR 1873.)

Effect of amendments. — D.C. Law 13-313, in subsec. (a)(2), deleted “who is at least 18 years of age” following “account holder”; and, in subsec. (a)(5), deleted “who is at least 18 years of age or older” following “account holder”.

Legislative history of Law 13-266. — For Law 13-266, see notes following § 1-307.61.

Legislative history of Law 13-313. — For Law 13-313, see notes following § 1-307.67.

§ 1-307.69. Emergency withdrawal.

(a) An account holder may make an emergency withdrawal of his or her opportunity account funds in accordance with this section.

(b) An account holder may make an emergency withdrawal for:

(1) Paying the costs of medical care or the expenses necessary to obtain medical care for the account holder or a spouse, domestic partner, father, mother, child, or dependent of the account holder;

(2) Making a payment necessary to prevent the eviction of the account holder from the primary residence of the account holder or to prevent foreclosure on a mortgage for the primary residence of the account holder; or

(3) Making payments necessary to enable the account holder to meet necessary living expenses following loss of employment.

(c) An account holder making an emergency withdrawal shall only withdraw funds deposited by the account holder and shall not withdraw matching funds;

(d) An emergency withdrawal shall not be made unless authorized by an administering organization on a case-by-case basis.

(e) An account holder shall deposit funds into the opportunity account in the same amount as the funds withdrawn from the account for the emergency withdrawal no later than 12 months after the date of the withdrawal. If the account holder fails to make the deposit:

(1) The account holder shall lose his or her matching funds and the matching funds shall be returned to the District of Columbia and administering organization in the same amounts as the matching funds were provided;

(2) The account holder shall be removed from the opportunity account program; and

(3) All funds deposited by the account holder into the opportunity account shall be returned to the account holder.

(Apr. 3, 2001, D.C. Law 13-266, § 10, 48 DCR 1240.)

Legislative history of Law 13-266. — For Law 13-266, see notes following § 1-307.61.

§ 1-307.70. Disposition upon death.

(a) An account holder shall designate in writing a contingent beneficiary at the time the account is established.

(b) In the event of the death of an account holder, ownership of the account shall be transferred to the contingent beneficiary. If the contingent beneficiary is deceased, is not eligible to be an account holder, or otherwise cannot or will not accept ownership of the account, the matching funds shall be returned to the District of Columbia and administering organization in the same amounts as the matching funds were provided and the funds in the opportunity account shall be disbursed in accordance with District of Columbia law.

(c) The account holder may change, by a written instrument, his or her designation of the contingent beneficiary at any time.

(Apr. 3, 2001, D.C. Law 13-266, § 11, 48 DCR 1240.)

Legislative history of Law 13-266. — For Law 13-266, see notes following § 1-307.61.

§ 1-307.71. Use of reserve funds for administrative expenses.

(a) No more than 20% of the funds in the opportunity account reserve fund account shall be used for administrative costs of the opportunity account program during either of the first 2 years of an opportunity account program. No more than 15% of the funds in the opportunity account reserve fund account may be used for administrative costs during any subsequent year.

(b) Funds deposited by account holders shall not be used for administrative costs.

(Apr. 3, 2001, D.C. Law 13-266, § 12, 48 DCR 1240.)

Legislative history of Law 13-266. — For Law 13-266, see notes following § 1-307.61.

§ 1-307.72. Exclusion of opportunity account funds from public assistance program calculations.

Funds in an opportunity account, including accrued interest, shall not be considered in the determination of whether a person is eligible to receive, or the determination of the amount of, any public assistance or benefits.

(Apr. 3, 2001, D.C. Law 13-266, § 13, 48 DCR 1240.)

Legislative history of Law 13-266. — For Law 13-266, see notes following § 1-307.61.

§ 1-307.73. Rulemaking.

The Mayor shall promulgate rules, in accordance with subchapter I of Chapter 5 of Title 2, to carry out the purposes and functions of this part.

(Apr. 3, 2001, D.C. Law 13-266, § 14, 48 DCR 1240.)

Legislative history of Law 13-266. — For Law 13-266, see notes following § 1-307.61.

§ 1-307.74. Report to Council.

The Mayor shall provide a comprehensive report on the costs and benefits of the administration of the Opportunity Account Office and opportunity account programs to the Council 18 months after April 3, 2001, and every 2 years thereafter.

(Apr. 3, 2001, D.C. Law 13-266, § 15, 48 DCR 1240.)

Legislative history of Law 13-266. — For Law 13-266, see notes following § 1-307.61.

Part Di

MEDICAL LIABILITY CAPTIVE INSURANCE AGENCY.

§ 1-307.81. Definitions.

For the purposes of this part, the term:

(1) “Advisory Council” means the advisory council established by § 1-307.85.

(2) “Agency” means the District of Columbia Medical Liability Captive Insurance Agency.

(3) “Captive manager” means the person appointed by the Risk Officer pursuant to § 1-307.84(b) to run the day-to-day affairs of the Agency.

(4) “Commissioner” means the Commissioner of the Department of Insurance, Securities, and Banking.

(5) “Fund” or “Medical Liability Captive Trust Fund” means the Medical Liability Captive Trust Fund established under § 1-307.91.

(6) “Federally qualified health center” shall have the same meaning as provided in section 1861(aa)(4) of the Social Security Act, approved August 14, 1935 (79 Stat. 313; 42 U.S.C. § 1395x(aa)(4)).

(7) “Gap coverage” means coverage for medical malpractice risks of the District’s Federally Qualified Health Centers not covered through the Federal Tort Claims Act, approved August 2, 1946 (60 Stat. 847; 15 U.S.C. § 41 et seq.).

(8) “Health center” means a health center or service that:

(A) Has obtained all licenses, permits, and certificates of occupancy or need that are required as a precondition to lawful operation in the District;

(B) Is a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986, approved August 16, 1954 (68A Stat. 163; 26 U.S.C. § 501(c)(3));

(C) Is certified by the Commissioner to meet the requirements of this part; and

(D) Accepts and provides services to individuals regardless of ability to pay; provided, that a health center may accept payment from:

(i) Health insurance providers for services rendered, if a patient has such insurance coverage and consents in writing to the filing of a claim for benefits to which the patient is eligible; and

(ii) Patients on a sliding fee scale.

(9) "Operational" means that the Council has approved insurance policies for the health centers covered under part B of this subchapter.

(10) "Risk Officer" means the Chief Risk Officer, established by Reorganization Plan No. 1 of 2003, effective December 15, 2003 [D.C. Official Code, subchapter XVIII, Chapter 15, Title 1].

(11) "Tail coverage" means liability insurance purchased by an insured to extend the insurance coverage beyond the end of the policy period of a liability policy written on a claims-made basis.

(12) "Volunteer service provider" means any person licensed to practice in the District who provides health-care, rehabilitative, social, or related administrative services:

(A) At a health center;

(B) To or with respect to a patient of the health center; and

(C) Without receiving payment from the District government for the performance of those services.

(July 18, 2008, D.C. Law 17-196, § 2, 55 DCR 6261.)

Legislative history of Law 17-196. — Law 17-196, the "District of Columbia Medical Liability Captive Insurance Agency Establishment Act of 2008", was introduced in Council and assigned Bill No. 17-513 which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and

second readings on April 15, 2008, and May 6, 2008, respectively. Signed by the Mayor on May 21, 2008, it was assigned Act No. 17-390 and transmitted to both Houses of Congress for its review. D.C. Law 17-196 became effective on July 18, 2008.

§ 1-307.82. Establishment of the District of Columbia Medical Liability Captive Insurance Agency.

(a) There is established, as a subordinate agency under the Mayor, the District of Columbia Medical Liability Captive Insurance Agency.

(b) The purpose of the Agency is to provide medical malpractice liability insurance policies for health centers, including coverage for the staff, contractors, and volunteer service providers for the services provided at the health centers. The liability of the Agency for medical malpractice liability insurance policies shall be limited to the funds in the Medical Liability Captive Trust Fund.

(July 18, 2008, D.C. Law 17-196, §. 3, 55 DCR 6261.)

Legislative history of Law 17-196. — For Law 17-196, see notes following § 1-307.81.

§ 1-307.83. Authority of the Agency.

(a) The Agency shall have the authority to:

(1) Enter into contracts as are necessary or proper to carry out the provisions and purposes of this part, including the authority to enter into contracts with similar captives of other states for the joint performance of common administrative functions or with persons or other entities for the performance of organizational, management, or administrative functions;

(2) Take such action as necessary:

(A) To avoid the payment of improper claims against the Agency or the coverage provided by or through the Agency;

(B) To recover any amounts erroneously or improperly paid by the Agency;

(C) To recover any amounts paid by the Agency as a result of mistake of fact or law; or

(D) To recover or collect premiums or other amounts due the Agency;

(3) Establish and modify rates, rate schedules, rate adjustments, expense allowances, claim reserve formulas, and any other actuarial function appropriate to the operation of the Agency; provided, that adjustments to rates and rate schedules shall take into consideration appropriate factors in accordance with established actuarial and underwriting practices;

(4) Issue policies of medical malpractice insurance, including tail coverage, in accordance with the requirements of the plan of operation under § 1-307.87;

(5) Appoint appropriate legal, actuarial, audit, and other committees as necessary to provide technical assistance in the operation of the Agency, policy and other contract design, and any other function within the authority of the Agency;

(6) Employ and fix the compensation of employees;

(7) Prepare and distribute certificate of eligibility forms and enrollment instruction forms to health centers;

(8) Provide for reinsurance of risks incurred by the Agency;

(9) Provide for, and employ, cost containment measures and risk management program standards;

(10) Seek and receive grant funding from the United States government, District departments or agencies, and private foundations;

(11) Adopt policies, procedures, rules, and standards as may be necessary or convenient for the operation of the Agency consistent with this part;

(12) Adopt and administer personnel policies and procedures;

(13) Employ its own general counsel and special counsel from time to time, as needed;

(14) Adopt and administer its own procurement and contracting policies and procedures;

(15) Select, retain, and employ professionals, contractors, or agents which are necessary or convenient to enable or assist the Agency in carrying out the purposes of the Agency; and

(16) Provide gap coverage to the District's Federally Qualified Health Centers for medical malpractice risks.

(b) Upon the request of the Risk Officer, the Mayor and the governing officer or body of each instrumentality of the District, by delegation or agreement, may direct that personnel or other resources of a District agency or instrumentality be made available to the Agency on a full cost-reimbursable basis to carry out the Agency's duties. Personnel detailed to the Agency under this subsection shall not be considered employees of the Agency, but shall remain employees of the agency or instrumentality from which the employees were detailed. With the consent of an executive agency, department, or independent agency of the federal government or the District government, the Agency may use the information, services, staff, and facilities of the department or agency on a full cost-reimbursable basis.

(July 18, 2008, D.C. Law 17-196, § 4, 55 DCR 6261.)

Legislative history of Law 17-196. — For Law 17-196, see notes following § 1-307.81.

§ 1-307.84. Management of the Agency.

(a) The Agency shall be administered by the Risk Officer.

(b) The Risk Officer shall employ a captive manager who shall run the day-to-day affairs of the Agency and shall report to the Risk Officer. The Risk Officer shall employ such other professionals as are necessary or appropriate to effectuate the purposes of this part.

(c) The Risk Officer may delegate the authority to perform any function authorized to be performed by the Risk Officer under this part.

(d) The Risk Officer may hire Agency staff.

(July 18, 2008, D.C. Law 17-196, § 5, 55 DCR 6261.)

Legislative history of Law 17-196. — For Law 17-196, see notes following § 1-307.81.

§ 1-307.85. Advisory Council to the Agency.

(a) There is established an Advisory Council to the Agency to assist and advise the Risk Officer regarding the Agency.

(b) The Advisory Council shall consist of 7 members appointed by the Risk Officer. One member shall represent the District of Columbia Primary Care Association, 2 members shall represent District of Columbia health centers, and 4 members shall have insurance expertise.

(c) The Risk Officer and the captive manager shall serve as ex officio members of the Advisory Council.

(d) The Risk Officer shall serve as chairperson of the Advisory Council.

(e) Except as provided in subsection (f) of this section, Advisory Council

members shall serve terms of 3 years. An Advisory Council member's term shall continue until his or her successor is appointed. The Advisory Council members may be reappointed for additional terms.

(f) The Risk Officer shall determine the terms the initial Advisory Council members shall serve. Three of the Advisory Council members shall serve terms of 2 years, 2 shall serve terms of 4 years, and 2 shall serve terms of 6 years.

(g) Vacancies in the Advisory Council shall be filled by the Risk Officer. Advisory Council members may be removed by the Risk Officer for cause.

(h) Advisory Council members shall not be compensated in their capacity as Advisory Council members, but shall be reimbursed for reasonable expenses incurred in the necessary performance of their duties.

(i) The Advisory Council shall:

(1) Advise the Risk Officer in the general oversight of the Agency;

(2) Assess the needs and interests of the health centers; and

(3) Meet at least on an annual basis, at meetings announced by the Risk Officer.

(July 18, 2008, D.C. Law 17-196, § 6, 55 DCR 6261; Mar. 25, 2009, D.C. Law 17-353, § 239, 56 DCR 1117.)

Effect of amendments. — D.C. Law 17-353 validated a previously made technical correction in subsec. (e).

Legislative history of Law 17-353. — For Law 17-353, see notes following § 1-129.05.

Legislative history of Law 17-196. — For Law 17-196, see notes following § 1-307.81.

§ 1-307.86. Approval of plan of operation by Commissioner; annual report to Commissioner; financial examination.

(a) Prior to the offering and issuance of insurance policies, the Agency shall submit to the Commissioner for approval a plan of operation which meets the requirements of § 1-307.87. The Agency shall also submit to the Commissioner for approval any proposed material changes to the plan.

(b) On or before March 2 of each year, the Agency shall submit to the Commissioner, on a form prescribed by the Commissioner by rule, a report of its financial condition, as prepared by a certified public accountant. The Agency shall file a consolidated report on behalf of each of its segregated accounts. The Agency shall use generally accepted accounting principles and include any useful or necessary modifications or adaptations thereof that have been approved or accepted by the Commissioner for the type of insurance and kinds of insurers to be reported upon, as supplemented by additional information required by the Commissioner.

(c)(1) The Commissioner, or his designee, may visit the Agency at such times as he or she considers necessary to thoroughly inspect and examine the affairs of the Agency to ascertain:

(A) The financial condition of the Agency;

(B) The ability of the Agency to fulfill its obligations; and

(C) Whether the Agency has complied with the provisions of this part and the rules adopted pursuant thereto.

(2) The Commissioner may require the Agency to retain qualified independent legal, financial, and examination services from outside the Department of Insurance, Securities, and Banking to conduct the examination and make recommendations to the Commissioner. The cost of the examination shall be paid by the Agency.

(July 18, 2008, D.C. Law 17-196, § 7, 55 DCR 6261.)

Legislative history of Law 17-196. — For Law 17-196, see notes following § 1-307.81.

§ 1-307.87. Plan of operation for the Agency.

(a) The captive manager shall submit to the Risk Officer a plan of operation for the Agency that has been approved by the Commissioner and any amendments to the plan necessary or suitable to assure the fair, reasonable, and equitable administration of the Agency.

(b) The plan of operation shall:

(1) Become effective upon approval in writing by the Commissioner and the Risk Officer;

(2) Establish procedures for the operation of the Agency;

(3) Establish procedures for health centers to qualify to purchase medical malpractice insurance from the Agency;

(4) Establish procedures for offering gap coverage for the District's Federally Qualified Health Centers;

(5) Establish procedures, under the management of the Risk Officer, for the payment of administrative expenses;

(6) Establish procedures for adjustment and payment of claims made under the policies issued by the Agency, including procedures for administrative review and resolution of disputes arising over such claims;

(7) Establish procedures for tail coverage to health centers purchasing medical malpractice liability coverage through the Agency;

(8) Develop standards for the level of subsidies that shall be provided to health centers to offset premiums due to the Agency;

(9) Establish rules, conditions, and procedures for facilitating the reinsurance of risks of participating health centers;

(10) Establish risk management standards to which the health centers shall adhere and auditing procedures for the compliance of risk management standards by health centers;

(11) Establish underwriting guidelines for policyholders; and

(12) Provide for other matters as may be necessary and proper for the execution of the Risk Officer's and the captive manager's respective powers, duties, and obligations under this part.

(July 18, 2008, D.C. Law 17-196, § 8, 55 DCR 6261.)

Legislative history of Law 17-196. — For Law 17-196, see notes following § 1-307.81.

§ 1-307.88. Annual report to the Mayor and Council.

(a) The Risk Officer shall submit an annual report to the Mayor and the Council.

(b) The report shall be filed within 60 days of the Agency filing the annual report with the Commissioner under § 1-307.86(b).

(c) The report shall summarize the activities of the Agency in the preceding calendar year, including the net earned premiums, health center enrollment in the Agency program, the expense of administration, and the paid and incurred losses.

(July 18, 2008, D.C. Law 17-196, § 9, 55 DCR 6261.)

Legislative history of Law 17-196. — For Law 17-196, see notes following § 1-307.81.

§ 1-307.89. Liabilities of Risk Officer, captive manager, and Advisory Council.

(a) The Risk Officer, captive manager, and Advisory Council members shall not be liable for any obligations of the Agency.

(b) The Risk Officer, captive manager, and Advisory Council members shall not be liable, or shall any cause of action of any nature arise against them, for any act or omission related to the performance of their powers and duties under this part, unless the act or omission constitutes willful or wanton misconduct.

(July 18, 2008, D.C. Law 17-196, § 10, 55 DCR 6261.)

Legislative history of Law 17-196. — For Law 17-196, see notes following § 1-307.81.

§ 1-307.90. Coverage.

The Agency shall offer health centers medical malpractice insurance consistent with coverage offered in the market; provided, that any policy offered by the Agency shall state that the liability of the Agency shall be limited to the funds in the Medical Liability Captive Trust Fund. The coverage to be issued to the health centers shall be established by the Risk Officer with the advice of the Advisory Council and subject to the approval of the Commissioner.

(July 18, 2008, D.C. Law 17-196, § 11, 55 DCR 6261.)

Legislative history of Law 17-196. — For Law 17-196, see notes following § 1-307.81.

§ 1-307.91. Establishment of the Medical Liability Captive Trust Fund.

(a) There is established as a nonlapsing fund the Medical Liability Captive Trust Fund, which shall be used for the purposes set forth in subsection (b) of this section. All funds deposited in the Fund, and any interest earned thereon,

shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (b) of this section without regard to fiscal year limitation, subject to authorization by Congress.

(b) The Fund shall be used solely to pay for the costs and expenses of the establishment, operation, and administration of the Agency, which costs and expenses shall include:

- (1) The hiring of a captive manager and other professionals to manage and administer the day-to-day operations of the Agency;
- (2) The hiring of staff, including a general counsel;
- (3) The administration of the day-to-day operations of the Agency;
- (4) The payment of claims and losses under policies of insurance to be issued by the Agency;

(5) Reimbursement for reasonable expenses incurred by Advisory Council members in the necessary performance of their duties; and

(6) The costs of the management, administration, and operation of the Fund.

(c) There shall be deposited into the Fund:

(1) All insurance premiums or other revenues which may be received by the Fund;

(2) All funds received under § 1-307.83(a)(10); and

(3) An amount equal to the unobligated balance of amounts appropriated and allocated by section 2055(18) of the Fiscal Year 2007 Budget Support Act of 2006, effective March 2, 2007 (D.C. Law 16-192; 53 DCR 6899).

(d) The funds in the Fund may be invested in private securities and any other form of investment which is considered appropriate by the Commissioner and the Chief Financial Officer. The Agency shall file each with the Commissioner and the Chief Financial Officer a schedule of the proposed investments of the funds and any material changes thereto.

(July 18, 2008, D.C. Law 17-196, § 12, 55 DCR 6261.)

Legislative history of Law 17-196. — For Law 17-196, see notes following § 1-307.81.

Law 16-192, referred to in subsec. (c)(3), is noted under § 42-2855.01.

References in text. — Section 2055 of D.C.

§ 1-307.92. Exemption from procurement and merit personnel laws.

The Agency shall not be subject to Unit A of Chapter 3 of Title 2 or Chapter 6 of this title.

(July 18, 2008, D.C. Law 17-196, § 13, 55 DCR 6261.)

Legislative history of Law 17-196. — For Law 17-196, see notes following § 1-307.81.

§ 1-307.93. Rules.

The Mayor may issue rules to implement the provisions of this part.

(July 18, 2008, D.C. Law 17-196, § 14, 55 DCR 6261.)

Legislative history of Law 17-196. — For Law 17-196, see notes following § 1-307.81.

Delegation of Authority. — Delegation of Rulemaking Authority to the Commissioner of the Department of Insurance, Securities and

Banking under the District of Columbia Medical Liability Captive Insurance Agency Establishment Act of 2008, see Mayor's Order 2010-161, October 15, 2010 (57 DCR 9819).

§ 1-307.94. Dissolution of the District of Columbia Free Clinic Captive Insurance Company.

The District of Columbia Free Clinic Captive Insurance Company, an instrumentality established by the District of Columbia Free Clinic Captive Insurance Company Establishment Emergency Act of 2007, effective October 3, 2007 (D.C. Act 17-113; 54 DCR 9977), is dissolved. All of its assets (including cash, accounts receivable, reserve funds, real or personal property, and contract and other rights), positions, personnel, and records, and the unexpended balances of appropriations, allocations, and other funds available or to be made available to it, are transferred to the Agency.

(July 18, 2008, D.C. Law 17-196, § 15, 55 DCR 6261.)

Legislative history of Law 17-196. — For Law 17-196, see notes following § 1-307.81.

Part E

PAYMENTS IN LIEU OF TAXES.

§ 1-308.01. Definitions.

For the purposes of this part, the term:

(1) "Bonds" means any bonds, notes, or other instruments issued by the District pursuant to § 1-204.90 and secured by payments in lieu of taxes or other security authorized by this part.

(2) "Development costs" means all costs and expenses relating to the development, redevelopment, purchase, acquisition, protection, financing, construction, expansion, reconstruction, restoration, rehabilitation, renovation and repair, and the furnishing, equipping, and operating of a project, including:

(A) The purchase or lease expense for land, structures, real or personal property, rights, rights-of-way, roads, franchises, easements, and interests acquired or used for, or in connection with, the project and costs of demolishing or removing buildings or structures on land so acquired;

(B) Expenses incurred for utility lines, structures, or equipment charges;

(C) Interest prior to, and during, construction, and for a period as may be necessary for the operation of a project;

(D) Provisions for reserves for principal and interest for extensions, enlargements, additions, improvements, and extraordinary repairs and replacements;

(E) Expenses incurred for architectural, engineering, energy efficiency technology, design and consulting, financial, and legal services;

(F) Fees for letters of credit, bond insurance, debt service reserve insurance, surety bonds, or similar credit or liquidity enhancement instruments;

(G) Costs and expenses associated with the conduct and preparation of specification and feasibility studies, plans, surveys, historic structure reports, and estimates of expenses and revenues;

(H) Expenses necessary or incident to issuing Bonds and determining the feasibility and the fiscal impact of financing the acquisition, construction, or development of a project; and

(I) The provision of a proper allowance for contingencies and initial working capital.

(3) "Home Rule Act" means Chapter 2 of Title 1.

(4) "Owner" means, with respect to the PILOT parcel, the owner of a fee simple or a possessory interest.

(5) "Payments in lieu of taxes" or "PILOT" means payments made with respect to a PILOT parcel for a PILOT period in lieu of real property taxes.

(6) "PILOT agreement" means a written agreement between the District and the owner of a PILOT parcel providing for payments in lieu of taxes for the purpose of financing one or more projects or for other authorized uses as provided under this part.

(7) "PILOT parcel" means a tax lot or lots (or a portion thereof) exempt from the payment of real property tax in accordance with the provisions of this part and § 47-1002(29).

(8) "PILOT period" means the period during which a PILOT parcel (or a portion thereof) will be exempt from the payment of real property tax.

(Apr. 5, 2005, D.C. Law 15-293, § 2, 52 DCR 1465.)

Legislative history of Law 15-293. — Law 15-293, the "Payments in Lieu of Taxes Act of 2004", was introduced in Council and assigned Bill No. 15-882, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on November 9, 2004, and December 7, 2004, respectively. Signed by the Mayor on January

4, 2005, it was assigned Act No. 15-689 and transmitted to both Houses of Congress for its review. D.C. Law 15-293 became effective on April 5, 2005.

Resolutions. — Resolution 18-389, the "DOT PILOT Revision Emergency Approval Resolution of 2010", was approved effective February 2, 2010.

§ 1-308.02. PILOT agreements.

(a)(1)(A) Subject to approval by the Council under § 1-308.03(a) or (b), the Mayor may enter into a PILOT agreement for the purpose of financing the development costs of one or more projects which qualify under § 1-204.90. Except as otherwise provided in the PILOT agreement, payments in lieu of

taxes made pursuant to the PILOT agreement may be assigned or pledged in connection with the Bonds authorized to be issued under this part.

(B) As an inducement to enter into the PILOT agreement, a portion of the payments in lieu of taxes pursuant to the PILOT agreement may be used in accordance with the terms of the PILOT agreement for any other use which will be deemed to contribute to the health, education, safety, or welfare of, or the creation or preservation of jobs for, residents of the District, or to economic development of the District, including the development, redevelopment, and expansion of business, commerce, housing, or tourism, or the provision of necessary or desirable public infrastructure improvements.

(2) A PILOT agreement pursuant to this subsection shall include:

(A) The description of the PILOT parcel;

(B) The date, or the manner of determining the date, on which the exemption from real property tax for the PILOT parcel shall commence and terminate;

(C) The party who shall be obligated to make payments in lieu of taxes;

(D) The requirement that payments in lieu of taxes shall be paid in accordance with the PILOT agreement;

(E) The project (or projects) to be financed with the proceeds of Bonds;

(F) The terms and conditions of the issuance of the Bonds to finance the project (or projects) and the application of the Bond proceeds, including the conditions which must be satisfied prior to the issuance of the Bonds and the uses and application of the Bond proceeds; and

(G) If a portion of the payments in lieu of taxes pursuant to the PILOT agreement may be used other than for the purpose of financing any project which qualifies under § 1-204.90:

(i) The portion of payments in lieu of taxes which shall secure the Bonds;

(ii) The portion of payments in lieu of taxes shall be applied to the other use; and

(iii) The application of the portion of payments in lieu of taxes set forth in sub-subparagraph (ii) of this subparagraph.

(b)(1) Subject to approval by the Council under § 1-308.03(b), the Mayor may enter into a PILOT agreement for any other use which will be deemed to contribute to the health, education, safety, or welfare of, or the creation or preservation of jobs for, residents of the District, or to economic development of the District, including the development, redevelopment, and expansion of business, commerce, housing, or tourism, or the provision of necessary or desirable public infrastructure improvements.

(2) A PILOT agreement pursuant to this subsection shall include:

(A) The description of the PILOT parcel;

(B) The date, or the manner of determining the date, on which the exemption from real property tax for the PILOT parcel shall commence and terminate;

(C) The party who shall be obligated to make the payments in lieu of taxes;

(D) The requirement that the payments in lieu of taxes shall be paid in accordance with the PILOT agreement; and

(E) The use for which the payments in lieu of taxes shall be applied, including a detailed delineation of the expenditures to be made.

(c) Notwithstanding any of the provisions of this part, a PILOT agreement shall not result in a reduction of the total assessed value of real property subject to taxation under Chapter 8 of Title 47.

(d) A PILOT Agreement shall be an encumbrance upon, and run with, the PILOT Parcel. A memorandum of the PILOT Agreement shall be recorded in the land records of the District.

(Apr. 5, 2005, D.C. Law 15-293, § 3, 52 DCR 1465.)

Legislative history of Law 15-293. — For Law 15-293, see notes following § 1-308.01.

§ 1-308.03. Approval by the Council.

(a)(1) The issuance of Bonds, including the execution of the PILOT agreement and other financing agreements and documents, under 1-308.02(a)(1)(A) shall be subject to the approval of the Council. The Mayor shall transmit to the Council a proposed resolution to approve the issuance of Bonds, the maximum amount of the Bonds to be issued, and the PILOT agreement for a 60-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. The proposed resolution shall include:

(A) The terms of the Bonds to be issued;

(B) The terms of the PILOT agreement, including a statement that the proposed form of the PILOT agreement has been transmitted to the Council;

(C)(i) The amount of the payments in lieu of taxes; and

(ii) The amount of the real property taxes which would be paid in the absence of the PILOT agreement if the proposed project (or projects) were completed;

(D) The public benefits to be derived from the project (or projects) to be financed by the Bonds and the likelihood that project (or projects) would be completed in the absence of the approval of the transaction;

(E) If a portion of the payments in lieu of taxes pursuant to the PILOT agreement may be used other than for the purpose of financing a project which qualifies under § 1-204.90, the public benefits to be derived from the use and the likelihood that project would be completed in the absence of the approval of the transaction;

(F)(i) Whether conventional, or alternative forms of, financing are available;

(ii) Whether best efforts have been made to secure conventional, or alternative forms of, financing; and

(iii) Why conventional, or alternative forms of, financing is impracticable or undesirable;

(G) If a project to be financed by the Bonds (which, for the purposes of this paragraph, shall include an ownership interest in property which will benefit from the project to be financed by the Bonds) or other use is to be funded or financed is to be operated or held for profit:

(i) Whether the District will have an ownership interest or profits participation; and

(ii) If the District will not have an ownership interest or profits participation, why an ownership interest or profits participation is impracticable or undesirable; and

(H) A financial analysis prepared by the Office of the Chief Financial Officer, which financial analysis shall consist of the following:

(i) A report delineating the amount of the payments in lieu of taxes, including the amount of the real property taxes which would be paid in the absence of the PILOT agreement, if the proposed project (or projects) were completed;

(ii) The effect of the PILOT Agreement on the total assessed value of real property subject to taxation under Chapter 8 of Title 47; and

(iii) The effect of the PILOT Agreement on the budget and financial plan.

(2) If the Council does not approve or disapprove the transaction within the 60-day review period, the proposed resolution shall be deemed disapproved.

(3) If the proposed terms of the transaction shall change in any material respect, including the terms of the proposed PILOT agreement which was transmitted to the Council, a new proposed resolution which complies with paragraph (1) of this subsection shall be submitted to the Council for approval in accordance with this section.

(b)(1) The execution of the PILOT agreement, and any related agreements and documents, pursuant to § 1-308.02(a)(1)(B) or (b) shall be subject to the approval of the Council by act.

(2) The act shall include the following findings:

(A) The terms of the PILOT agreement, including a statement that the proposed form of the PILOT agreement has been transmitted to the Council;

(B) The terms of any other agreement or document, or any subsidy or assistance which will be provided, in connection with the PILOT agreement or proposed use;

(C)(i) The amount of the payments in lieu of taxes; and

(ii) The amount of the real property taxes which would be paid in the absence of the PILOT agreement if the expenditures for the proposed use were made (and the proposed project (or projects) for which a subsidy or assistance will be received, if any, were completed);

(D) The public benefits to be derived from the proposed use (and any project (or projects) for which a subsidy or assistance will be received) and the likelihood that the proposed project would be completed (and the project (or projects) for which a subsidy or assistance will be received, if any, would be completed) in the absence of the approval of the transaction;

(E)(i) Whether best efforts have been made to secure other means of achieving the proposed use; and

(ii) Why the other means of achieving the proposed use is impracticable or undesirable;

(F) If a proposed use (which, for the purposes of this paragraph, shall include an ownership interest in property which will benefit from the proposed

use (or a project for which a subsidy or assistance will be received, if any)) is to be operated or held for profit:

(i) Whether the District will have an ownership interest or profits participation; and

(ii) If the District will not have an ownership interest or profits participation, why an ownership interest or profits participation is impracticable or undesirable; and

(G) A financial analysis prepared by the Office of the Chief Financial Officer, which financial analysis shall consist of the following:

(i) A report delineating the amount of the payments in lieu of taxes, including the amount of the real property taxes which would be paid in the absence of the PILOT agreement, if the proposed project (or projects) were completed;

(ii) The effect of the PILOT Agreement on the total assessed value of real property subject to taxation under Chapter 8 of Title 47; and

(iii) The effect of the PILOT Agreement on the budget and financial plan.

(3) If the proposed terms of the transaction shall change in any material respect, including the terms of the proposed PILOT agreement which was transmitted to the Council, a new act which complies with paragraph (1) of this subsection shall be required to approve the transaction in accordance with this section.

(Apr. 5, 2005, D.C. Law 15-293, § 4, 52 DCR 1465.)

Legislative history of Law 15-293. — For “DOT PILOT Revision Emergency Approval Resolution of 2006”, was approved effective

Resolutions. — Resolution 16-845, the October 18, 2006.

§ 1-308.04. Payment and collection of payments in lieu of taxes.

(a) The owner of the PILOT parcel shall make the payments in lieu of taxes to the District at the same time and in the same manner as real property taxes under Chapter 8 of Title 47; provided, that in connection with issuance of Bonds, the PILOT may be paid for the benefit of the holders of the Bonds to the bond trustee or other persons as provided in the financing documents for the purposes set forth therein; provided further, that if such provisions are included in the financing documents, the PILOT shall constitute a lien against the property on which the PILOT was assessed to the same extent as a real property tax lien and shall be deemed to be a tax within the meaning of 11 U.S.C. §§ 502(b), 505, and 507(a)(8)(B).

(b) Payments in lieu of taxes shall be subject to the same penalty and interest provisions as unpaid real property tax under the Chapter 8 of Title 47.

(c) A lien for unpaid payments in lieu of taxes, including penalty and interest, shall attach to the PILOT parcel in the same manner and with the same priority as a lien for delinquent real property tax under Chapter 13A of Title 47.

(d) The unpaid payments in lieu of taxes may be collected in accordance with Chapter 13A of Title 47.

(Apr. 5, 2005, D.C. Law 15-293, § 5, 52 DCR 1465.)

Legislative history of Law 15-293. — For Law 15-293, see notes following § 1-308.01.

§ 1-308.05. Bond authorization.

The issuance of Bonds in accordance with this part is authorized. The aggregate principal amount of Bonds which may be issued under this part shall not exceed \$500 million; provided, that the aggregate amount of Bonds that may be allocated to benefit directly projects in the Central Business District, as that term is defined in Chapter 17 of Title 11 of the District of Columbia Municipal Regulations (11 DCMR § 1700 et seq.), shall not exceed \$300 million.

(Apr. 5, 2005, D.C. Law 15-293, § 6, 52 DCR 1465; Mar. 8, 2007, D.C. Law 16-244, § 101, 54 DCR 609.)

Effect of amendments. — D.C. Law 16-244 substituted “\$500 million; provided, that the aggregate amount of Bonds that may be allocated to benefit directly projects in the Central Business District, as that term is defined in Chapter 17 of Title 11 of the District of Columbia Municipal Regulations (11 DCMR § 1700 et seq.), shall not exceed \$300 million” for “\$250 million”.

Legislative history of Law 15-293. — For Law 15-293, see notes following § 1-308.01.

Legislative history of Law 16-244. — Law

16-244, the “PILOT Authorization Increase and Arthur Copper/Carrollsbury Public Improvements Revenue Bonds Approval Act of 2006”, was introduced in Council and assigned Bill No. 16-929, which was referred to Committee on Finance and Revenue. The Bill was adopted on first and second readings on November 14, 2006, and December 5, 2006, respectively. Signed by the Mayor on December 28 2006, it was assigned Act No. 16-600 and transmitted to both Houses of Congress for its review. D.C. Law 16-244 became effective on March 8, 2007.

§ 1-308.06. Details of Bonds.

(a) Subject to the terms of the resolution authorizing issuance of the Bonds, the Mayor may take any action necessary or appropriate in accordance with this part in connection with the preparation, execution, issuance, sale, delivery, and payment of Bonds, including determinations of:

(1) The final form, content, designation, and terms of the Bonds, including a determination that the Bonds may be issued in certificate or book entry form;

(2) The principal amount of the Bonds to be issued and denominations of the Bonds;

(3) The rate or rates of interest or the method for determining the rate or rates of interest on the Bonds;

(4) The date or dates of issuance, sale, and delivery of, and the payment of interest on the Bonds, and the maturity date or dates of the Bonds;

(5) The terms under which the Bonds may be paid, optionally or mandatorily redeemed, accelerated, tendered, called, or put for redemption, repurchase, or remarketing before their respective stated maturities;

(6) Provisions for the registration, transfer, and exchange of each series of Bonds and the replacement of mutilated, lost, stolen, or destroyed Bonds;

(7) The creation of any reserve fund, sinking fund, or other fund with respect to the Bonds;

(8) The time and place of payment of the Bonds;

(9) Procedures for monitoring the use of the proceeds received from the sale of the Bonds to ensure that they are properly applied to the project and used to accomplish the purposes of this part; and

(10) Actions necessary to qualify the Bonds under blue sky laws of any jurisdiction where the Bonds are marketed.

(b) The Bonds shall contain a legend, which shall provide that the Bonds shall be special obligations of the District, shall be nonrecourse to the District, shall not be a pledge of, and shall not involve, the faith and credit or the taxing power of the District (other than the PILOT or any other security authorized by this part), shall not constitute a debt of the District, and shall not constitute lending of the public credit for private undertakings as prohibited in § 1-206.02(a)(2).

(c) The Bonds shall be executed in the name of the District and on its behalf by the manual or facsimile signature of the Mayor. The Mayor's execution and delivery of the Bonds shall constitute conclusive evidence of the Mayor's approval, on behalf of the District, of the final form and content of the same.

(d) The official seal of the District, or facsimile of it, shall be impressed, printed, or otherwise reproduced on the Bonds.

(e) The Bonds may be issued at any time or from time to time in one or more issues and in one of more series.

(Apr. 5, 2005, D.C. Law 15-293, § 7, 52 DCR 1465.)

Legislative history of Law 15-293. — For Law 15-293, see notes following § 1-308.01.

§ 1-308.07. Security for Bonds.

(a) A series of Bonds may be secured by a trust agreement or trust indenture between the District and a corporate trustee having trust powers, or secured by a loan agreement or other instrument giving power to a corporate trustee by means of which the District may do the following:

(1) Make and enter into any and all covenants and agreements with the trustee or the holders of the Bonds that the District may determine to be necessary or desirable covenants and agreements as to:

(A) The application, investment, deposit, use, and disposition of the proceeds of Bonds and the other monies, securities, and property of the District;

(B) The assignment by the District of its rights in any agreement;

(C) Terms and conditions upon which additional Bonds of the District may be issued;

(D) Providing for the appointment of a trustee to act on behalf of bondholders and abrogating or limiting the rights of the bondholders to appoint a trustee; and

(E) Vesting in a trustee for the benefit of the holders of Bonds, or in the

bondholders directly, such rights and remedies as the District shall determine to be necessary or desirable;

(2) Pledge, mortgage or assign monies, agreements, property, or other assets of the District, either presently in hand or to be received in the future, or both;

(3) Provide for bond insurance and letters of credit, or otherwise enhance the credit of and security for the payment of the Bonds; and

(4) Provide for any other matters of like or different character that in any way affect the security for or payment of the Bonds.

(b) The Bonds are declared to be issued for essential public and governmental purposes. The Bonds and the interest thereon and the income therefrom, and all monies pledged or available to pay or secure the payment of the Bonds, shall at all times be exempt from taxation by the District, except for estate, inheritance, and gift taxes.

(c) The District does hereby pledge to and covenant and agree with the holders of any Bonds that, subject to the provisions of the financing documents, the District will not limit or alter the revenues pledged to secure the Bonds or the basis on which such revenues are collected or allocated, will not impair the contractual obligations of the District to fulfill the terms of any agreement made with the holders of the Bonds, will not in any way impair the rights or remedies of the holders, and will not modify in any way, with respect to the Bonds, the exemptions from taxation provided for in this part, until the Bonds, together with interest thereon, with interest on any unpaid installment of interest and all costs and expenses in connection with any suit, action or proceeding by or on behalf of the holders, are fully met and discharged. This pledge and agreement of the District may be included as part of the contract with the holders of any of its Bonds. This subsection shall constitute a contract between the District and the holders of the Bonds authorized by this part. To the extent that any acts or resolutions of the Council may be in conflict with this part, this part shall be controlling.

(d) Consistent with § 1-204.90(a)(4)(B) and, notwithstanding Article 9 of Title 28 [§ 28:9-101 et seq.]:

(1) A pledge made and security interest created in respect of any Bonds or pursuant to any related financing document shall be valid, binding, and perfected from the time the security interest is created, with or without physical delivery of any funds or any property and with or without any further action;

(2) The lien of the pledge shall be valid, binding, and perfected as against all parties having any claim of any kind in tort, contract, or otherwise against the District, whether or not such party has notice; and

(3) The security interest shall be valid, binding, and perfected whether or not any statement, document, or instrument relating to the security interest is recorded or filed.

(Apr. 5, 2005, D.C. Law 15-293, § 8, 52 DCR 1465.)

Legislative history of Law 15-293. — For Law 15-293, see notes following § 1-308.01.

§ 1-308.08. Default.

If there shall be a default in the payment of the principal of, or interest on, any Bonds of a series after the principal or interest shall become due and payable, whether at maturity or upon call for redemption, or if the District shall fail or refuse to carry out and perform the terms of any agreement with the holders of any of the Bonds, the holders of the Bonds, or the trustee appointed to act on behalf of the holders of the Bonds, may, subject to the provisions of the financing documents, do the following:

(1) By action, writ, or other proceeding, enforce all rights of the holders of the Bonds, including the right to require the District to carry out and perform the terms of any agreement with the holders of the Bonds or its duties under this part;

(2) By action, require the District to account as if it were the trustee of an express trust;

(3) By action, petition to enjoin any acts or things that may be unlawful or in violation of the rights of the holders of the Bonds; and

(4) Declare all the Bonds due and payable, whether or not in advance of maturity and, if all the defaults be made good, annul the declaration and its consequences.

(Apr. 5, 2005, D.C. Law 15-293, § 9, 52 DCR 1465.)

Legislative history of Law 15-293. — For Law 15-293, see notes following § 1-308.01.

§ 1-308.09. Liability.

(a) The members of the Council, the Mayor, or any person executing Bonds shall not be liable personally on the Bonds by reason of the issuance thereof.

(b) Notwithstanding any other provision of this part, the Bonds shall not be general obligations of the District and shall not be in any way a debt or liability of the District within the meaning of any debt or other limit prescribed by law. The full faith and credit or the general taxing power of the District (other than the PILOT or other security authorized under this part) shall not be pledged to secure the payment of any Bonds.

(Apr. 5, 2005, D.C. Law 15-293, § 10, 52 DCR 1465.)

Legislative history of Law 15-293. — For Law 15-293, see notes following § 1-308.01.

§ 1-308.10. Prior legislation.

This part shall not adversely affect any actions taken, agreements entered into, pledge of security made, or Bonds issued prior to April 5, 2005.

(Apr. 5, 2005, D.C. Law 15-293, § 11, 52 DCR 1465.)

Legislative history of Law 15-293. — For Law 15-293, see notes following § 1-308.01.

Part F

POVERTY LAWYER LOAN ASSISTANCE REPAYMENT PROGRAM.

§ 1-308.21. Definitions. [Repealed].

Repealed.

(Mar. 2, 2007, D.C. Law 16-203, § 2, 53 DCR 9055; Mar. 14, 2007, D.C. Law 16-294, § 15, 54 DCR 1086; Sept. 18, 2007, D.C. Law 17-20, § 3033(a), 54 DCR 7052; Sept. 14, 2011, D.C. Law 19-21, § 3003, 58 DCR 6226.)

Emergency legislation. — For temporary (90 day) addition, see § 2 of District of Columbia Poverty Lawyer Loan Repayment Program Emergency Act of 2006 (D.C. Act 16-512, October 25, 2006, 53 DCR 9086).

For temporary (90 day) addition, see § 2 of District of Columbia Poverty Lawyer Loan Repayment Program Congressional Review Emergency Act of 2006 (D.C. Act 16-563, December 19, 2006, 53 DCR 10259).

For temporary (90 day) amendment of section, see § 3033(a) of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

Legislative history of Law 16-203. — Law 16-203, the “District of Columbia Poverty Lawyer Loan Assistance Repayment Program Act of 2006”, was introduced in Council and assigned Bill No. 16-660, which was referred to the Committee on Judiciary. The Bill was adopted on first and second readings on July 11, 2006, and October 3, 2006, respectively. Signed by the Mayor on October 25, 2006, it was assigned Act No. 16-503 and transmitted to both Houses of Congress for its review. D.C. Law 16-203 became effective on March 2, 2007.

Legislative history of Law 16-294. — Law 16-294, the “Second Technical Amendments Act of 2006”, was introduced in Council and as-

signed Bill No. 16-996, which was referred to Committee on the Whole. The Bill was adopted on first and second readings on November 14, 2006, and December 5, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-653 and transmitted to both Houses of Congress for its review. D.C. Law 16-294 became effective on March 14, 2007.

Legislative history of Law 17-20. — For Law 17-20, see notes following § 1-301.114.

Legislative history of Law 19-21. — Law 19-21, the “Fiscal Year 2012 Budget Support Act of 2011”, was introduced in Council and assigned Bill No. 19-203, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 25, 2011, and June 14, 2011, respectively. Signed by the Mayor on July 22, 2011, it was assigned Act No. 19-98 and transmitted to both Houses of Congress for its review. D.C. Law 19-21 became effective on September 14, 2011.

Delegation of Authority. — Delegation of Authority Pursuant to D.C. Act 16-512, the District of Columbia Poverty Lawyer Loan Assistance Repayment Program Emergency Act of 2006, and any substantially identical successor legislation, see Mayor’s Order 2006-161, November 8, 2006 (53 DCR 9362).

§ 1-308.22. Establishment of the District of Columbia Poverty Lawyer Loan Assistance Repayment Program. [Repealed].

Repealed.

(Mar. 2, 2007, D.C. Law 16-203, § 3, 53 DCR 9055; Sept. 18, 2007, D.C. Law 17-20, § 3033(b), 54 DCR 7052; Sept. 14, 2011, D.C. Law 19-21, § 3003, 58 DCR 6226.)

Emergency legislation. — For temporary (90 day) addition, see § 3 of District of Columbia Poverty Lawyer Loan Repayment Program

Emergency Act of 2006 (D.C. Act 16-512, October 25, 2006, 53 DCR 9086).

For temporary (90 day) addition, see § 3 of

District of Columbia Poverty Lawyer Loan Repayment Program Congressional Review Emergency Act of 2006 (D.C. Act 16-563, December 19, 2006, 53 DCR 10259).

For temporary (90 day) amendment of section, see § 3033(b) of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

Legislative history of Law 16-203. — For Law 16-203, see notes following § 1-308.21.

Legislative history of Law 17-20. — For Law 17-20, see notes following § 1-301.114.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 4-1701.01.

§ 1-308.23. Administration of the Program. [Repealed].

Repealed.

(Mar. 2, 2007, D.C. Law 16-203, § 4, 53 DCR 9055; Sept. 18, 2007, D.C. Law 17-20, § 3033(c), 54 DCR 7052; Sept. 14, 2011, D.C. Law 19-21, § 3003, 58 DCR 6226.)

Emergency legislation. — For temporary (90 day) addition, see § 4 of District of Columbia Poverty Lawyer Loan Repayment Program Emergency Act of 2006 (D.C. Act 16-512, October 25, 2006, 53 DCR 9086).

For temporary (90 day) addition, see § 4 of District of Columbia Poverty Lawyer Loan Repayment Program Congressional Review Emergency Act of 2006 (D.C. Act 16-563, December 19, 2006, 53 DCR 10259).

For temporary (90 day) amendment of sec-

tion, see § 3033(c) of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

Legislative history of Law 16-203. — For Law 16-203, see notes following § 1-308.21.

Legislative history of Law 17-20. — For Law 17-20, see notes following § 1-301.114.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 4-1701.01.

§ 1-308.24. Eligibility. [Repealed].

Repealed.

(Mar. 2, 2007, D.C. Law 16-203, § 5, 53 DCR 9055; Sept. 14, 2011, D.C. Law 19-21, § 3003, 58 DCR 6226.)

Emergency legislation. — For temporary (90 day) addition, see § 5 of District of Columbia Poverty Lawyer Loan Repayment Program Emergency Act of 2006 (D.C. Act 16-512, October 25, 2006, 53 DCR 9086).

For temporary (90 day) addition, see § 5 of District of Columbia Poverty Lawyer Loan Repayment Program Congressional Review Emer-

gency Act of 2006 (D.C. Act 16-563, December 19, 2006, 53 DCR 10259).

Legislative history of Law 16-203. — For Law 16-203, see notes following § 1-308.21.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 4-1701.01.

§ 1-308.25. Award of Program loans. [Repealed].

Repealed.

(Mar. 2, 2007, D.C. Law 16-203, § 6, 53 DCR 9055; Sept. 14, 2011, D.C. Law 19-21, § 3003, 58 DCR 6226.)

Emergency legislation. — For temporary (90 day) addition, see § 6 of District of Columbia Poverty Lawyer Loan Repayment Program Emergency Act of 2006 (D.C. Act 16-512, October 25, 2006, 53 DCR 9086).

For temporary (90 day) addition, see § 6 of

District of Columbia Poverty Lawyer Loan Repayment Program Congressional Review Emergency Act of 2006 (D.C. Act 16-563, December 19, 2006, 53 DCR 10259).

Legislative history of Law 16-203. — For Law 16-203, see notes following § 1-308.21.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 4-1701.01.

§ 1-308.26. Participant obligations. [Repealed].

Repealed.

(Mar. 2, 2007, D.C. Law 16-203, § 7, 53 DCR 9055; Sept. 14, 2011, D.C. Law 19-21, § 3003, 58 DCR 6226.)

Emergency legislation. — For temporary (90 day) addition, see § 7 of District of Columbia Poverty Lawyer Loan Repayment Program Emergency Act of 2006 (D.C. Act 16-512, October 25, 2006, 53 DCR 9086).

For temporary (90 day) addition, see § 7 of District of Columbia Poverty Lawyer Loan Repayment Program Congressional Review Emer-

gency Act of 2006 (D.C. Act 16-563, December 19, 2006, 53 DCR 10259).

Legislative history of Law 16-203. — For Law 16-203, see notes following § 1-308.21.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 4-1701.01.

§ 1-308.27. Disbursement of loans. [Repealed].

Repealed.

(Mar. 2, 2007, D.C. Law 16-203, § 8, 53 DCR 9055; Sept. 14, 2011, D.C. Law 19-21, § 3003, 58 DCR 6226.)

Emergency legislation. — For temporary (90 day) addition, see § 8 of District of Columbia Poverty Lawyer Loan Repayment Program Emergency Act of 2006 (D.C. Act 16-512, October 25, 2006, 53 DCR 9086).

For temporary (90 day) addition, see § 8 of District of Columbia Poverty Lawyer Loan Repayment Program Congressional Review Emer-

gency Act of 2006 (D.C. Act 16-563, December 19, 2006, 53 DCR 10259).

Legislative history of Law 16-203. — For Law 16-203, see notes following § 1-308.21.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 4-1701.01.

§ 1-308.28. Rules. [Repealed].

Repealed.

(Mar. 2, 2007, D.C. Law 16-203, § 9, 53 DCR 9055; Sept. 14, 2011, D.C. Law 19-21, § 3003, 58 DCR 6226.)

Emergency legislation. — For temporary (90 day) addition, see § 9 of District of Columbia Poverty Lawyer Loan Repayment Program Emergency Act of 2006 (D.C. Act 16-512, October 25, 2006, 53 DCR 9086).

For temporary (90 day) addition, see § 9 of District of Columbia Poverty Lawyer Loan Repayment Program Congressional Review Emer-

gency Act of 2006 (D.C. Act 16-563, December 19, 2006, 53 DCR 10259).

Legislative history of Law 16-203. — For Law 16-203, see notes following § 1-308.21.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 4-1701.01.

§ 1-308.29. Appropriations contingency. [Repealed].

Repealed.

(Mar. 2, 2007, D.C. Law 16-203, § 10, 53 DCR 9055; Aug. 16, 2008, D.C. Law 17-219, § 7078, 55 DCR 7598.)

Emergency legislation. — For temporary (90 day) addition, see § 10 of District of Columbia Poverty Lawyer Loan Repayment Program Emergency Act of 2006 (D.C. Act 16-512, October 25, 2006, 53 DCR 9086).

For temporary (90 day) addition, see § 10 of District of Columbia Poverty Lawyer Loan Repayment Program Congressional Review Emergency Act of 2006 (D.C. Act 16-563, December 19, 2006, 53 DCR 10259).

Legislative history of Law 16-203. — For Law 16-203, see notes following § 1-308.21.

Legislative history of Law 17-219. — Law 17-219, the “Fiscal Year 2009 Budget Support Act of 2008”, was introduced in Council and assigned Bill No. 17-678, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 13, 2008, and June 3, 2008, respectively. Signed by the Mayor on June 26, 2008, it was assigned Act No. 17-419 and transmitted to both Houses of Congress for its review. D.C. Law 17-219 became effective on August 16, 2008.

Subchapter V. Advisory Neighborhood Commissions.

Part A

GENERAL.

§ 1-309.01. Purpose; definitions.

(a)(1) Section 1-207.38 provides that the Council shall, by act, divide the District of Columbia into neighborhood commission areas and establish, for each such area, an Advisory Neighborhood Commission. Such § 1-207.38 was to be effective only if a majority of the qualified electors voting in the charter referendum voted for the establishment of the Advisory Neighborhood Commissions.

(2) In the charter referendum a majority of the qualified electors did vote to establish such Commissions, and it is the purpose of this part to implement the provisions of § 1-207.38.

(b) Repealed.

(c) For the purposes of this part, the term:

(1) “Board” means the District of Columbia Board of Elections and Ethics.

(2) “Commission” means Advisory Neighborhood Commission.

(3) “Emergency” means an action taken to immediately preserve the public peace, health, safety, welfare, or morals pursuant to § 2-505(c).

(4) “Gender identity or expression” shall have the same meaning as provided in § 1-1401.02(12A).

(Oct. 10, 1975, D.C. Law 1-21, § 2, 22 DCR 2065; Oct. 30, 1975, D.C. Law 1-27, § 4, 22 DCR 2472; Sept. 20, 1977, D.C. Law 2-16, § 2(a), 24 DCR 3336; Sept. 26, 1984, D.C. Law 5-111, § 2(a), 31 DCR 3952; Mar. 6, 1991, D.C. Law 8-203, § 3(a), 37 DCR 8420; Jun. 27, 2000, D.C. Law 13-135, § 2(a), 47 DCR 2741; June 25, 2008, D.C. Law 17-177, § 2(a), 55 DCR 3696.)

Cross references. — Criminal justice supervisory board, authority to promulgate rules of procedure, see § 3-904.

Prior Codifications. — 1981 Ed., § 1-252. 1973 Ed., § 1-171a.

Effect of amendments. — D.C. Law 13-135 added subsec. (c).

D.C. Law 17-177, in subsec. (c), added par. (4).

Legislative history of Law 1-21. — Law 1-21 was introduced in Council and assigned Bill No. 1-87, which was referred to the Committee on Advisory Neighborhood Councils. The Bill was adopted on first and second readings

on June 10, 1975 and June 24, 1975, respectively. Signed by the Mayor on July 22, 1975, it was assigned Act No. 1-33 and transmitted to both Houses of Congress for its review.

Legislative history of Law 1-27. — For legislative history of D.C. Law 1-27, see Historical and Statutory Notes following § 1-207.38.

Legislative history of Law 2-16. — Law 2-16 was introduced in Council and assigned Bill No. 2-77, which was referred to the Committee on Advisory Neighborhood Commissions. The Bill was adopted on first and second readings on May 17, 1977 and May 31, 1977, respectively. Enacted without signature by the Mayor on June 22, 1977, it was assigned Act No. 2-49 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-111. — Law 5-111 was introduced in Council and assigned Bill No. 5-333, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 26, 1984 and July 10, 1984, respectively. Signed by the Mayor on July 13, 1984, it was assigned Act No. 5-161 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-203. — For legislative history of D.C. Law 8-203, see His-

torical and Statutory Notes following § 1-309.14.

Legislative history of Law 13-135. — Law 13-135, the “Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000,” was introduced in Council and assigned Bill No. 13-468, which was referred to the Committee on Local and Regional Affairs. The Bill was adopted on first and second readings on February 1, 2000, and March 7, 2000, respectively. Signed by the Mayor on March 28, 2000, it was assigned Act No. 13-313 and transmitted to both Houses of Congress for its review. D.C. Law 13-135 became effective on June 27, 2000.

Legislative history of Law 17-177. — Law 17-177, the “Prohibition of Discrimination on the Basis of Gender Identity and Expression Amendment Act of 2008,” was introduced in Council and assigned Bill No. 17-330, which was referred to the Committee on Workforce Development and Government Operations. The Bill was adopted on first and second readings on February 5, 2008, and March 4, 2008, respectively. Signed by the Mayor on March 19, 2008, it was assigned Act No. 17-329 and transmitted to both Houses of Congress for its review. D.C. Law 17-177 became effective on June 25, 2008.

§ 1-309.02. Advisory Neighborhood Commission areas.

There are hereby established in the District of Columbia Advisory Neighborhood Commission areas, the boundaries of which shall be as depicted on the maps of the District of Columbia annexed to and made a part of this part.

(Oct. 10, 1975, D.C. Law 1-21, § 3, 22 DCR 2066; Oct. 30, 1975, D.C. Law 1-27, § 4, 22 DCR 2472; Sept. 26, 1984, D.C. Law 5-111, § 2(a), 31 DCR 3952.)

Section references. — This section is referred to in § 1-309.03.

Prior Codifications. — 1981 Ed., § 1-253. 1973 Ed., § 1-171a-1.

Legislative history of Law 1-21. — For legislative history of D.C. Law 1-21, see Historical and Statutory Notes following § 1-309.01.

Legislative history of Law 1-27. — For legislative history of D.C. Law 1-27, see Historical and Statutory Notes following § 1-207.38.

Legislative history of Law 5-111. — For legislative history of D.C. Law 5-111, see His-

torical and Statutory Notes following § 1-309.01.

References in text. — “Maps of the District of Columbia annexed to and made a part of this act,” referred to in this section, are set forth in 22 DCR 2074 to 2081.

Editor’s notes. — District boundaries established: Pursuant to §§ 1-309.03 and 1-1011.01, § 2 of D.C. Law 5-13 established the boundaries of both Advisory Neighborhood Commission areas and single-member districts within Advisory Neighborhood Commission areas.

§ 1-309.03. Single-member districts.

(a) The Council shall, by act, establish single-member districts for each of the neighborhood commission areas in § 1-309.02. Such districts shall be established in a timely manner following the receipt of alternate plans from the ward task forces on Advisory Neighborhood Commissions, established by § 1-1041.01. Each single-member district shall have a population of approxi-

mately 2,000 people, and shall be as nearly equal as possible. The boundaries of the single-member districts shall conform to the greatest extent possible with the boundaries of the census blocks which are established by the United States Bureau of the Census. Each advisory neighborhood commission area shall be located to the greatest extent possible within the boundaries of 1 election ward. An advisory neighborhood commission area may be located within 2 election wards if the location results from the limitations of census geography or if the location promotes a rational public policy, including, but not limited to, respect for the natural geography of the District, neighborhood cohesiveness, or the development of compact and contiguous areas. Upon adoption of the act establishing such districts, the Council shall cause a description of the boundaries of each such district to be published in the District of Columbia Register.

(b) The Council shall, by act after public hearing by the Council's Committee of the Whole, make such adjustments in the boundaries of the Advisory Neighborhood Commission single-member districts and the Advisory Neighborhood Commission areas as are necessary as a result of population shifts and changes. Such adjustments shall be made in a timely manner following the receipt of alternative plans from the ward task forces on Advisory Neighborhood Commissions, established by § 1-1041.01. Any adjustments made less than 180 days prior to a regularly scheduled election shall not be effective for that election.

(Oct. 10, 1975, D.C. Law 1-21, § 4, 22 DCR 2066; Oct. 30, 1975, D.C. Law 1-27, § 4, 22 DCR 2472; June 23, 1981, D.C. Law 4-14, § 2(a), 28 DCR 2132; Mar. 16, 1982, D.C. Law 4-87, § 5(a), 29 DCR 433; Mar. 10, 1983, D.C. Law 4-199, § 7, 30 DCR 119; June 22, 1983, D.C. Law 5-13, § 3, 30 DCR 2433; Sept. 26, 1984, D.C. Law 5-111, § 2(a), 31 DCR 3952; Mar. 8, 1991, D.C. Law 8-240, § 3, 38 DCR 337.)

Cross references. — Elections, ward task forces, reports, see § 1-1041.02.

Prior Codifications. — 1981 Ed., § 1-254. 1973 Ed., § 1-171b.

Temporary Addition of Section. — Section 2 of D.C. Law 19-145 establishes boundaries for Advisory Neighborhood Commission areas and single-member districts within Advisory Neighborhood Commission areas.

Section 3 of D.C. Law 19-145 adds a provision to read as follows:

“Sec. 3. Applicability of boundaries.

“(a) Except as provided in subsection (b) of this section, the ANC and SMD boundaries set forth in section 2(a) shall apply as of January 2, 2013.

“(b) The ANC and SMD boundaries set forth in section 2(a) shall apply for purposes of administering the November 6, 2012 election, including determining qualifications for candidacy and the residence of a person signing a nominating petition for the November 6, 2012 election.”

Section 7(b) of D.C. Law 19-145 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) establishment of boundaries, see § 2 of Advisory Neighborhood Commissions Boundaries Emergency Act of 2002 (D.C. Act 14-359, April 30, 2002, 49 DCR 4639).

For temporary (90 day) amendment of section, see § 2 of Advisory Neighborhood Commissions Boundaries Establishment Emergency Amendment Act of 2002 (D.C. Act 14-451, July 23, 2002, 49 DCR 7873).

For temporary (90 day) establishment and applicability of Advisory Neighborhood Commission and single-member district area boundaries, see §§ 2, 3 of Advisory Neighborhood Commissions Boundaries Emergency Act of 2012 (D.C. Act 19-341, April 8, 2012, 59 DCR 2788).

Legislative history of Law 1-21. — For legislative history of D.C. Law 1-21, see Historical and Statutory Notes following § 1-309.01.

Legislative history of Law 1-27. — For legislative history of D.C. Law 1-27, see Historical and Statutory Notes following § 1-207.38.

Legislative history of Law 4-14. — Law 4-14 was introduced in Council and assigned Bill No. 4-97, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on April 7, 1981 and April 28, 1981, respectively. Signed by the Mayor on May 1, 1981, it was assigned Act No. 4-28 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-87. — Law 4-87 was introduced in Council and assigned Bill No. 4-181, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 24, 1981 and December 8, 1981, respectively. Approved without the signature of the Mayor on January 19, 1981, it was assigned Act No. 4-141 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-199. — Law 4-199 was introduced in Council and assigned Bill No. 4-427, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 16, 1982 and December 14, 1982, respectively. Signed by the Mayor on December 28, 1982, it was assigned Act No. 4-283 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-13. — Law 5-13 was introduced in Council and assigned Bill No. 5-158, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 12, 1983 and April 26, 1983, respectively. Signed by the Mayor on May 4, 1983, it was assigned Act No. 5-27 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-111. — For legislative history of D.C. Law 5-111, see Historical and Statutory Notes following § 1-309.01.

Legislative history of Law 8-240. — Law 8-240 was introduced in Council and assigned Bill No. 8-560, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-323 and transmitted to both Houses of Congress for its review.

Legislative history of Law 14-310. — For Law 14-310, see notes following § 1-307.63.

Editor's notes. — District boundaries established: Pursuant to §§ 1-309.03 and 1-1011.01, § 2 of D.C. Law 5-13 established the boundaries of both Advisory Neighborhood Commission areas and single-member districts within Advisory Neighborhood Commission areas.

District boundaries established: D.C. Law 6-7, effective July 17, 1985, amended the narrative descriptions of the boundaries of Advisory Neighborhood Commissions 5A, 5B, 8A and 8C, and amended the map description of the boundaries of Advisory Neighborhood Commission 8A.

Pursuant to subsection (a) of this section, § 2 of D.C. Law 9-112 established the boundaries of both Advisory Neighborhood Commission areas and single-member districts within Advisory Neighborhood Commission areas.

D.C. Law 9-174, effective October 3, 1992, amended D.C. Law 9-112 to change the boundaries of single-member districts 1C03, 1C04, and 1C05.

Pursuant to section (a) of this section, § 2 of D.C. Law 14-133, as amended by § 2 of D.C. Law 14-213, established boundaries for Advisory Neighborhood Commission areas and single-member districts within Advisory Neighborhood Commission areas.

Section 18 of D.C. Law 14-310 amended § 2(a) of D.C. Law 14-133 to change the narrative descriptions of the boundaries of Advisory Neighborhood Commissions SMD 3D01 and SMD 3D06.

Advisory Neighborhood Commissions Boundaries. as of June 12, 2003

Boundary descriptions.

There are hereby established, pursuant to § 1-309.03(a), Advisory Neighborhood Commission ("ANC") areas and single-member district ("SMD") areas within Advisory Neighborhood Commission areas, the boundaries of which shall be depicted on the official maps of the District of Columbia according to the following legal descriptions:

May 10, 2002, D.C. Law 14-133, § 2(a) Description of ANC 1A Boundaries

All streets are located in the Northwest quadrant. Beginning at the intersection of 16th Street and Spring Road; East on Spring Road to New Hampshire Avenue; Northeast on New Hampshire Avenue to Rock Creek Church Road; East on Rock Creek Church Road to Park Place; South on Park Place to Columbia Road; West on Columbia Road to Sherman Avenue; South on Sherman Avenue to Harvard Street; West on Harvard Street to 15th Street; North on 15th Street to Columbia Road; West on Columbia Road to 16th Street; North on 16th Street to Spring Road.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of Single Member District (SMD) 1A01 Boundaries

All streets are located in the Northwest quadrant. Beginning at the intersection of 16th Street and Spring Road; South on Spring Road to Spring Place; East on Spring Place to Ogden Street; East on Ogden Street to Hertford Place; South on Hertford Place to Oak Street; East on Oak Street to Center Street; North on Center

Street to Ogden Street; East on Ogden Street to 14th Street; North on 14th Street to Otis Street; West on Otis Street to Center Street; North on Center Street to Parkwood Place; East on Parkwood Place to 14th Street; North on 14th Street to Spring Road; West on Spring Road to the point of beginning.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 1A02 Boundaries

All streets are located in the Northwest quadrant. Beginning at the intersection of 16th Street and Spring Place; South on 16th Street to Monroe Street; East on Monroe Street to 14th Street; North on 14th Street to Ogden Street; West on Ogden Street to Center Street; South on Center Street to Oak Street; West on Oak Street to Hertford Place; North on Hertford Place to Ogden Street; West on Ogden Street to Spring Place; West on Spring Place to 16th Street.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(a) Description of SMD 1A03 Boundaries

All streets are located in the Northwest quadrant. Beginning at the intersection of 16th Street and Irving Street; South on 16th Street to Columbia Road; East on Columbia Road to 15th Street; South on 15th Street to Harvard Street; East on Harvard Street to Harvard Court; North on Harvard Court to Columbia Road; East on Columbia Road to 14th Street; North on 14th Street to Irving Street; West on Irving Street to 16th Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 1A04 Boundaries

All streets are located in the Northwest quadrant. Beginning at the intersection of 14th Street and Perry Place; South on 14th Street to Parkwood Place; West on Parkwood Place to Center Street; South on Center Street to Otis Place; East on Otis Place to 14th Street; South on 14th Street to Meridian Place; East on Meridian Place to Holmead Place; South on Holmead Place to Monroe Street; East on Monroe Street to 11th Street; North on 11th Street to Otis Place; West on Otis Place to Holmead Place; North on Holmead Place to Perry Place; West on Perry Place to 14th Street.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(b) Description of SMD 1A05 Boundaries

All streets are located in the Northwest quadrant. Beginning at the intersection of 16th Street and Monroe Street; South on 16th Street to Irving Street; East on Irving Street to 14th Street; North on 14th Street to Park Road; East on Park Road to Holmead Place; North on Holmead Place to Meridian Place; West on Meridian Place to 14th Street; South on 14th Street to Monroe Street; West on Monroe Street to 16th Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 1A06 Boundaries

All streets are located in the Northwest quadrant. Beginning at the intersection of 14th Street and Park Road; South on 14th Street to Irving Street; East on Irving Street to Sherman Avenue; North on Sherman Avenue to Lamont Street; West on Lamont Street to 11th Street; North on 11th Street to Monroe Street; West on Monroe Street to Holmead Place; South on Holmead Place to Park Road; West on Park Road to 14th Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 1A07 Boundaries

All streets are located in the Northwest quadrant. Beginning at the intersection of 14th Street and Spring Road; South on 14th Street to Perry Place; East on Perry Place to Holmead Place; South on Holmead Place to Otis Place; East on Otis Place to 11th Street; South on 11th Street to Lamont Street; East on Lamont Street to Sherman Avenue; North on Sherman Avenue to New Hampshire Avenue; North on New Hampshire Avenue to Rock Creek Church Road; North on Rock Creek Church Road to Spring Road; West on Spring Road to 14th Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 1A08 Boundaries

All streets are located in the Northwest quadrant. Beginning at the intersection of Rock Creek Church Road and Spring Road; South on Rock Creek Church Road to New Hampshire Avenue; Southwest on New Hampshire Avenue to Park Road; East on Park Road to Georgia Avenue; North on Georgia Avenue to Newton Place; East on Newton Place to 6th Street; South on 6th Street to Newton Place; East on Newton Place to Warder Street; South on Warder Street to Park Road; East on Park Road to Park Place; North on Park Place to Rock Creek Church Road; West on Rock Creek Church Road to New Hampshire Avenue; South on New Hampshire Avenue to Spring Road; West on Spring Road to Rock Creek Church Road.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(c) Description of SMD 1A09 Boundaries

All streets are located in the Northwest quadrant. Beginning at the intersection of Sherman Avenue and Park Road; South on Sherman Avenue to Kenyon Street; East on Kenyon Street to Warder Street; North on Warder Street to Newton Place; West on Newton Place to 6th Street; North on 6th Street to Newton Place; West on Newton Place to Georgia Avenue; South on Georgia Avenue to Park Road; West on Park Road to Sherman Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(d) Description of SMD 1A10 Boundaries

All streets are located in the Northwest quadrant. Beginning at the intersection of 11th Street and Harvard Street; East on Harvard

Street to Sherman Avenue; North on Sherman Avenue to Columbia Road; East on Columbia Road to Park Place; North on Park Place to Park Road; West on Park Road to Warder Street; South on Warder Street to Kenyon Street; West on Kenyon Street to Sherman Avenue; South on Sherman Avenue to Irving Street; West on Irving Street to 11th Street; South on 11th Street to Harvard Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 1A11 Boundaries

All streets are located in the Northwest quadrant. Beginning at the intersection of 14th Street and Irving Street; South on 14th Street to Columbia Road; West on Columbia Road to Harvard Court; South on Harvard Court to Harvard Street; East on Harvard Street to 11th Street; North on 11th Street to Irving Street; West on Irving Street to 14th Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of ANC 1B Boundaries

All streets are located in the Northwest quadrant. Beginning at the intersection of Wiltberger Street and S Street; West on S Street to 14th Street; North on 14th Street to U Street; West on U Street to 16th Street; North on 16th Street to Columbia Road; East on Columbia Road to 15th Street; South on 15th Street to Harvard Street; East on Harvard Street to Sherman Avenue; North on Sherman Avenue to Columbia Road; East on Columbia Road to Park Place; South on Park Place to Michigan Avenue; Southeast on Michigan Avenue 1st Street; South on 1st Street to Bryant Street; West on Bryant Street to 2nd Street; South on 2nd Street to Rhode Island Avenue; Southwest on Rhode Island Avenue to Florida Avenue; Northwest on Florida Avenue to T Street; West on T Street to Wiltberger Street; South on Wiltberger Street to S Street.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(e) Description of SMD 1B01 Boundaries

All streets are located in the Northwest quadrant. Beginning at the intersection of Rhode Island Avenue and 2nd Street; North on 2nd Street to V Street; West on V Street to 4th Street; North on 4th Street to W Street; West on W Street to Georgia Avenue; South on Georgia Avenue to V Street; West on V Street to 9th Street; South on 9th Street to S Street; East on S Street to Wiltberger Street; North on Wiltberger Street to T Street; East on T Street to Florida Avenue; Southeast on Florida Avenue to Rhode Island Avenue; Northeast on Rhode Island Avenue to 2nd Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 1B02 Boundaries

All streets are located in the Northwest quadrant. Beginning at the intersection of 9th and S Streets; North on 9th Street to Florida Avenue; Northwest on Florida Avenue to 12th Street; South on 12th Street to V Street; West

on V Street to 14th Street; South on 14th Street to S Street; East on S Street to 9th Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 1B03 Boundaries

All streets are located in the Northwest quadrant. Beginning at the intersection of Florida Avenue and Sherman Avenue; North on Sherman Avenue to Euclid Street; West on Euclid Street to 14th Street; South on 14th Street to Belmont Street; East on Belmont Street to 13th Street; South on 13th Street to Florida Avenue; Southeast on Florida Avenue to Sherman Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 1B04 Boundaries

All streets are located in the Northwest quadrant. Beginning at the intersection of 12th Street and V Street; North on 12th Street to Florida Avenue; Southwest on Florida Avenue to 13th Street; North on 13th Street to Belmont Street; West on Belmont Street to 14th Street; South on 14th Street to Florida Avenue; Southwest on Florida Avenue to New Hampshire Avenue; Southwest on New Hampshire Avenue to V Street; East on V Street to 15th Street; South on 15th Street to U Street; East on U Street to 14th Street; North on 14th Street to V Street; East on V Street to 12th Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 1B05 Boundaries

All streets are located in the Northwest quadrant. Beginning at the intersection of 15th Street and U Street; North on 15th Street to V Street; West on V Street to New Hampshire Avenue; Northeast on New Hampshire Avenue to Florida Avenue; Northeast on Florida Avenue to 14th Street; North on 14th Street to Belmont Street; West on Belmont Street to 15th Street; North on 15th Street to Fuller Street; West on Fuller Street to 16th Street; South on 16th Street to U Street; East on U Street to 15th Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 1B06 Boundaries

All streets are located in the Northwest quadrant. Beginning at the intersection of Belmont Street and 14th Street; North on 14th Street to Euclid Street; West on Euclid Street to 15th Street; South on 15th Street to Belmont Street; East on Belmont Street to 14th Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 1B07 Boundaries

All streets are located in the Northwest quadrant. Beginning at the intersection of Euclid Street and 14th Street; North on 14th Street to Harvard Street; West on Harvard Street to 15th Street; North on 15th Street to Columbia Road; West on Columbia Road to 16th Street; South on 16th Street to Fuller Street; East on Fuller Street to 15th Street; South on 15th Street to Euclid Street; East on Euclid Street to 14th Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 1B08 Boundaries

All streets are located in the Northwest quadrant. Beginning at the intersection of Euclid Street and 13th Street; North on 13th Street to Fairmont Street; East on Fairmont Street to 11th Street; North on 11th Street to Harvard Street; West on Harvard Street to 14th Street; South on 14th Street to Euclid Street; East on Euclid Street to 13th Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 1B09 Boundaries

All streets are located in the Northwest quadrant. Beginning at the intersection of Georgia Avenue and Euclid Street; North on Georgia Avenue to Columbia Road; West on Columbia Road to Sherman Avenue; South on Sherman Avenue to Harvard Street; West on Harvard Street to 11th Street; South on 11th Street to Fairmont Street; West on Fairmont Street to 13th Street; South on 13th Street to Euclid Street; East on Euclid Street to Georgia Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 1B10 Boundaries

All streets are located in the Northwest quadrant. Beginning at the intersection of 1st Street and Bryant Street; North on 1st Street to Michigan Avenue; Northwest on Michigan Avenue to Columbia Road; West on Columbia Road to Georgia Avenue; South on Georgia Avenue to Fairmont Street; East on Fairmont Street to 6th Street; South on 6th Street to Howard Place; East on Howard Place to 4th Street; South on 4th Street to Bryant Street; East on Bryant Street to 1st Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 1B11 Boundaries

All streets are located in the Northwest quadrant. Beginning at the intersection of V Street and 2nd Street; North on 2nd Street to Bryant Street; West on Bryant Street to 4th Street; North on 4th Street to Howard Place; West on Howard Place to 6th Street; North on 6th Street to Fairmont Street; West on Fairmont Street to Georgia Avenue; South on Georgia Avenue to Euclid Street; West on Euclid Street to Sherman Avenue; South on Sherman Avenue to Florida Avenue; Southeast on Florida Avenue to V Street; East on V Street to Georgia Avenue; North on Georgia Avenue to W Street; East on W Street to 4th Street; South on 4th Street to V Street; East on V Street to 2nd Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of ANC 1C Boundaries

All streets are located in the Northwest quadrant. Beginning at the intersection of Connecticut Avenue and Florida Avenue; Northeast on Florida Avenue to U Street; East on U Street to 16th Street; North on 16th Street to Harvard Street; West on Harvard Street to the entrance of the National Zoological Park; West across the

bridge at the entrance of the National Zoological Park to Rock Creek; South along Rock Creek to Connecticut Avenue at the Taft Bridge; Southeast on Connecticut Avenue to Florida Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 1C01 Boundaries

All streets are located in the Northwest quadrant. Beginning at the intersection of Florida Avenue and Connecticut Avenue; Northeast on Florida Avenue to 18th Street; North on 18th Street to Kalorama Road; West on Kalorama Road to Columbia Road; South on Columbia Road to Connecticut Avenue; South on Connecticut Avenue to Florida Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 1C02 Boundaries

All streets are located in the Northwest quadrant. Beginning at the intersection of Columbia Road and Kalorama Road; Southwest on Columbia Road to Connecticut Avenue; Northwest on Connecticut Avenue to the point it crosses over Rock Creek; Northeast along Rock Creek to Calvert Street; East on Calvert Street to Biltmore Street; Southeast on Biltmore Street around the flower triangle (census block 3001 in census tract 40.01) and west on Biltmore Street to 20th Street; South on 20th Street to Belmont Road; East on Belmont Road to 19th Street; Southeast on 19th Street to Kalorama Road; East on Kalorama Road to Columbia Road.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 1C03 Boundaries

All streets are located in the Northwest quadrant. Beginning at the intersection of Kalorama Road and 18th Street; Northwest on 18th Street to Adams Mill Road; Northwest on Adams Mill Road to Calvert Street; West on Calvert Street to Biltmore Street; Southeast on Biltmore Street around the flower triangle (census block 3001 in census tract 40.01) and back West on Biltmore Street to 20th Street; South on 20th Street to Belmont Road; East on Belmont Road to 19th Street; Southeast on 19th Street to Kalorama Road; East on Kalorama Road to 18th Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 1C04 Boundaries

All streets are located in the Northwest quadrant. Beginning at Calvert Street at the point it crosses over Rock Creek; East on Calvert Street to Adams Mill Road; South on Adams Mill Road to Columbia Road; Northeast on Columbia Road to Ontario Road; Northwest on Ontario Road to 18th Street; North on 18th Street to Summit Place; West on Summit to Adams Mill Road; North on Adams Mill Road to Harvard Street; West on Harvard Street to the entrance of the national Zoological Park; West across the bridge at the entrance of the National Zoological Park to the point it crosses

Rock Creek; South on Rock Creek to the point it crosses under Calvert Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 1C05 Boundaries

All streets are located in the Northwest quadrant. Beginning at the intersection of Harvard Street and Argonne Place; West on Harvard Street to Adams Mill Road; South on Adams Mill Road to Summit Place; East on Summit Place to 18th Street; South on 18th Street to Ontario Road; Southeast on Ontario Road to Columbia Road; Northeast on Columbia Road to Quarry Road; Northwest on Quarry Road to Lanier Place; East on Lanier Place to Argonne Place; Northeast on Argonne Place to Harvard Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 1C06 Boundaries

All streets are located in the Northwest quadrant. Beginning at the point where Harvard Street meets 16th Street; South on 16th Street to Euclid Street; West on Euclid Street to Columbia Road; Northeast on Columbia Road to Quarry Road; Northwest on Quarry Road to Lanier Place; Northeast on Lanier Place to Argonne Place; Northeast on Argonne Place to Harvard Street; East on Harvard Street to 16th Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 1C07 Boundaries

All streets are located in the Northwest quadrant. Beginning at the point where 16th Street meets Euclid Street; West on Euclid Street to Columbia Road; Southwest on Columbia Road to 18th Street; South on 18th Street to Florida Avenue; Northeast on Florida Avenue to Ontario Road; North on Ontario Road to Kalorama Road; East on Kalorama Road to 16th Street; North on 16th Street to Euclid Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 1C08 Boundaries

All streets are located in the Northwest quadrant. Beginning at the intersection of Kalorama Road and 16th Street; South on 16th Street to U Street; West on U Street to Florida Avenue; Northeast on Florida Avenue to Ontario Road; North on Ontario Road to Kalorama Road; Northeast on Kalorama Road to 16th Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of ANC 1D Boundaries

All streets are located in the Northwest quadrant. Beginning at the corner of Klinge Road and Beach Drive; Northeast on Beach Drive to Piney Branch Parkway; Northeast on Piney Branch Parkway to the point it passes beneath 16th Street, South on 16th Street to Harvard Street; West on Harvard Street to the entrance of the National Zoological Park; West across the bridge at the entrance of the National Zoological Park to Rock Creek; North on

Rock Creek to Klinge Road; Northeast on Klinge Road to Beach Drive.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(f) Description of SMD 1D01 Boundaries

All streets are located in the Northwest quadrant. Beginning at the intersection of 18th Street and Newton Street; East on Newton Street to Brown Street; North on Brown Street to Oak Street; East on Oak Street to 16th Street; South on 16th Street to Monroe Street; West on Monroe Street to 17th Street; South on 17th Street to Lamont Street; West on Lamont Street to 18th Street; North on 18th Street to Newton Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 1D02 Boundaries

All streets are located in the Northwest quadrant. Beginning at the point where 16th Street passes over Piney Branch Parkway; South on 16th Street to Oak Street; West on Oak Street to Brown Street; South on Brown Street to Newton Street; West on Newton Street to 17th Street; North on 17th Street to Piney Branch Parkway; East on Piney Branch Parkway to the point of beginning.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(g) Description of SMD 1D03 Boundaries

All streets are located in the Northwest quadrant. Beginning at the corner of Klinge Road and Beach Drive; Northeast on Beach Drive to Piney Branch Parkway; Northeast on Piney Branch Parkway to 17th Street; South on 17th Street to Newton Street; West on Newton Street to 18th Street; South on 18th Street to Lamont Street; West on Lamont Street to Adams Mill Road; Northwest on Adams Mill Road to Klinge Road; West on Klinge Road to Beach Drive.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(h) Description of SMD 1D04 Boundaries

All streets are located in the Northwest quadrant. Beginning at the corner of 17th Street and Monroe Street; East on Monroe Street to 16th Street; South on 16th Street to Lamont Street; West on Lamont Street to Mount Pleasant Street; South on Mount Pleasant Street to Kenyon Street; West on Kenyon Street to 17th Street; North on 17th Street to Monroe Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 1D05 Boundaries

All streets are located in the Northwest quadrant. Beginning at the corner of Adams Mill Road and Lamont Street; East on Lamont Street to 17th Street; South on 17th Street to Irving Street; East on Irving Street to Mount Pleasant Street; South on Mount Pleasant Street to Hobart Street; West on Hobart Street to Irving Street; Northwest on Irving Street to

Adams Mill Road; Northwest on Adams Mill Road to Lamont Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 1D06 Boundaries

All streets are located in the Northwest quadrant. Beginning at Klinge Road where it passes over Rock Creek; East on Klinge Road to Adams Mill Road; Southeast on Adams Mill Road to Irving Street; Southeast on Irving Street to Hobart Street; Southeast on Hobart Street to Mount Pleasant Street; North on Mount Pleasant Street to Irving Street; West on Irving Street to 17th Street; North on 17th Street to Kenyon Street; East on Kenyon Street to Mount Pleasant Street; North on Mount Pleasant Street to Lamont Street; East on Lamont Street to 16th Street; South on 16th Street to Harvard Street; West on Harvard Street to the entrance of the National Zoological Park; West across the bridge at the entrance of the National Zoological Park to Rock Creek; Northwest on Rock Creek to Klinge Road.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of ANC 2A Boundaries

All of the following streets are in the Northwest quadrant unless otherwise designated. Beginning at the centerline of Rock Creek at its intersection with a line extending N Street to Rock Creek; East on the extension of N Street to 25th Street; East on N Street to 22nd Street; South on 22nd Street to Ward Place; Southeast on Ward Place to New Hampshire Avenue; Northeast on New Hampshire Avenue to N Street; East on N Street to 20th Street; South on 20th Street to Pennsylvania Avenue; Southeast on Pennsylvania Avenue to 17th Street; East on Pennsylvania Avenue to 15th Street; South on 15th Street to Maine Avenue; Southeast on Maine Avenue to the northwest edge of Route One South; Southwest on Route One South to the George Mason Memorial Bridge; Southwest on the George Mason Memorial Bridge to the District of Columbia-Commonwealth of Virginia boundary line at the Commonwealth of Virginia shore of the Potomac River; Northwest on the District of Columbia-Commonwealth of Virginia boundary line to the western end of the Theodore Roosevelt Memorial Bridge; Northwest across the Potomac River to the centerline of Rock Creek at Rock Creek's mouth; Northeast on the centerline of Rock Creek to the extension of N Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 2A01 Boundaries

All streets are in the Northwest quadrant unless otherwise designated. Starting at the intersection of 20th Street and Pennsylvania Avenue; Southeast on Pennsylvania Avenue to 17th Street; South on 17th Street to F Street; West on F Street to 19th Street; South on 19th Street for half a block (to the back of Thurston Hall Dorm); West parallel to F Street to Old Main Hall; South along the wall of Old Main

Hall to the rear of Old Main Hall; continuing west along the rear of Old Main Hall parallel to F Street to 20th Street; South on 20th Street to E Street; West on E Street to 21st Street; North on 21st Street to F Street; East on F Street to 20th Street; North on 20th Street to G Street; West on G Street to 21st Street; North on 21st Street to H Street; West on H Street half the block to alley between 2119 and 2121 H Street; North on alley to a point at 2124 I Street; West along alley to southwest corner of 2124 I Street; North to area between 2124 I Street and Rome Hall of the Academic Center at I Street; East on I Street to 20th Street and Pennsylvania Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(i) Description of SMD 2A02 Boundaries

All streets are in the Northwest quadrant unless otherwise designated. Beginning at the centerline of Rock Creek at its intersection with a line extending N Street west to Rock Creek; East on the N Street extension to 22nd Street; South on 22nd Street to Ward Place; East on Ward Place to New Hampshire Avenue; Northeast on New Hampshire Avenue to N Street; East on N Street to 20th Street; South on 20th Street to L Street; West on L Street to New Hampshire Avenue; Southwest on New Hampshire Avenue clockwise around Washington Circle to Pennsylvania Avenue on the west of the Circle; West along Pennsylvania Avenue to a point halfway between 26th and 27th Streets; South from said point to K Street; West on K Street to Rock Creek; North on Rock Creek to the point of beginning.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(j) Description of SMD 2A03 Boundaries

All streets are in the Northwest quadrant unless otherwise designated. Beginning at a point on Pennsylvania Avenue halfway between 26th and 27th Streets; Southeast on Pennsylvania Avenue to 24th Street; South on 24th Street to New Hampshire Avenue; Southwest on New Hampshire Avenue to I Street; East on I Street to 24th Street; South on 24th Street to H Street; West on H Street and a line extending H Street to I-66; Northwest along I-66 to its intersection with a line drawn south from a point on Pennsylvania Avenue halfway between 26th and 27th Streets; North on said line to Pennsylvania Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(k) Description of SMD 2A04 Boundaries

All streets are in the Northwest quadrant unless otherwise designated. Beginning at K Street and Rock Creek; East on K Street to a line extending south from a point on Pennsylvania Avenue halfway between 26th and 27th Streets; South along said line to I-66; Southeast along I-66 to a line extending H Street; East on

said line and H Street to 23rd Street; South half a block on 23rd Street to back of Hillel House; West along the back of Hillel House parallel to H Street behind New Hall Dorm to 24th Street; South on 24th Street to Virginia Avenue; West on Virginia Avenue to 25th Street; South on 25th Street to F Street; Northeast on F Street and a line extending F Street to I-66; South on I-66 to the E Street Expressway; East on the E Street Expressway to 23rd Street; South on 23rd Street and on a line extending 23rd Street through the Lincoln Memorial to 23rd Street, S.W., and along a line extending 23rd Street to the northern shoreline of the Potomac River; Northwest on the shoreline of the Potomac River to the Arlington Memorial Bridge; across the Potomac River on the Arlington Memorial Bridge to the District of Columbia Boundary on the Commonwealth of Virginia shore of the Potomac River; Northwest along the boundary of the District of Columbia to the Theodore Roosevelt Memorial Bridge; Northeast across the Potomac River to the mouth of Rock Creek; North on Rock Creek to K Street and Rock Creek.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(l) Description of SMD 2A05 Boundaries

All streets are in the Northwest quadrant unless otherwise designated. Starting at the intersection of 25th Street and G Street; East on G Street to Virginia Avenue; Southeast on Virginia Avenue to 24th Street; North on 24th Street past Saint Mary's Court to back of New Hall Dorm; East parallel to H Street to 23rd Street behind Hillel House; North on 23rd Street to H Street; East on H Street to 22nd Street; South on 22nd Street to Virginia Avenue; Southeast on Virginia Avenue to E Street; East on E Street to 20th Street; North on 20th Street to rear lots below F Street; East parallel to F Street to 19th Street behind Thurston Hall; North on 19th Street to F Street; East on F Street to 17th Street; North on 17th Street to Pennsylvania Avenue; East on Pennsylvania Avenue to 15th Street; South on 15th Street, continuing on 15th Street, S. W. to Maine Avenue; Southeast on Maine Avenue to Route 1 South; Southwest on Route 1 South across the George Mason Memorial Bridge to the District of Columbia—Commonwealth of Virginia boundary line at the Commonwealth of Virginia shore of the Potomac River; Northwest along the District of Columbia—Commonwealth of Virginia boundary line to the Arlington Memorial Bridge; Northeast on the Arlington Memorial Bridge to the northern shore of the Potomac River; Southeast along the northern shoreline of the Potomac River to a line extending 23rd Street, S.W. to the shore of the Potomac River; North along said line to 23rd Street, S.W.; North on 23rd Street, S.W., continuing on 23rd Street, N.W. to the E Street Expressway;

West on the E Street Expressway to a line extending F Street northeast to the center of the Expressway; Southwest on said line to F Street and 25th Street; North on 25th Street to G Street.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(m) Description of SMD 2A06 Boundaries

All streets are in the Northwest quadrant unless otherwise designated. Starting at 24th Street and Pennsylvania Avenue going Southeast on Pennsylvania Avenue to Washington Circle; counterclockwise around the Circle past New Hampshire Avenue on the southwest side of the Circle to New Hampshire Avenue on the northwest side of the Circle; Northwest on New Hampshire Avenue to L Street; West on L Street to 20th Street; South on 20th Street to I Street; West on I Street to 2124 I Street; South on I Street to the corner of the southeast corner of 2124 I Street; East at 2124 I Street to alley between 2119 H Street and 2121 H Street; South on alley to H Street; East on H Street to 21st Street; South on 21st Street to G Street; West on G Street to 20th Street; South on 20th Street to F Street; West on F Street to 21st Street; South on 21st Street to E Street; West on E Street to Virginia Avenue; Northwest on Virginia Avenue to 22nd Street; North on 22nd Street to H Street; West on H Street to 24th Street; North on 24th Street to I Street, West on I Street to New Hampshire Avenue; Northeast on New Hampshire Avenue to 24th Street; North on 24th Street to Pennsylvania Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(n) Description of ANC 2B Boundaries

All streets are in the Northwest quadrant unless otherwise designated. Beginning at the intersection of S Street and 14th Street; North along 14th Street to U Street; East along U Street to Florida Avenue; South on Florida Avenue to Massachusetts Avenue; South on 23rd Street to P Street; West on P Street to the point it passes over Rock Creek; South on Rock Creek to its intersection with a line extending N Street westward; East on said line extending N Street westward to 22nd Street; South on 22nd Street to Ward Place; East on Ward Place to New Hampshire Avenue; Northeast on New Hampshire Avenue to N Street; East on N Street to 20th Street; South on 20th Street to Pennsylvania Avenue; East on Pennsylvania Avenue to 15th Street; North on 15th Street to H Street; West on H Street to Vermont Avenue; North on Vermont Avenue to 15th Street; North on 15th Street to S Street; East on S Street to 14th Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 2B01 Boundaries

All streets are in the Northwest quadrant unless otherwise designated. Beginning at 19th Street and Florida Avenue; West along Florida

Avenue to Connecticut Avenue; South on Connecticut Avenue to R Street; East on R Street to 19th Street; North on 19th Street to Riggs Place; East on Riggs Place to New Hampshire Avenue; North on New Hampshire Avenue to Swann Street; West on Swann Street to 19th Street; North on 19th Street to Florida Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(o) Description of SMD 2B02 Boundaries

All streets are in the Northwest quadrant unless otherwise designated. Beginning at Florida Avenue and Connecticut Avenue; South on Florida Avenue to 23rd Street; South on 23rd Street to P Street; East on P Street to 22nd Street; South on 22nd Street to O Street; East on O Street to 21st Street; North on 21st Street to P Street; East on P Street to Hopkins Place; South on Hopkins Place to O Street; East on O Street to New Hampshire Avenue; South on New Hampshire Avenue to Sunderland Place; East on Sunderland Place to 19th Street; South on 19th Street to Jefferson Place; East on Jefferson Place to Connecticut Avenue; North on Connecticut Avenue to Dupont Circle; Counter-clockwise around Dupont Circle to 19th Street; North on 19th Street to R Street; West on R Street to Connecticut Avenue; North on Connecticut Avenue to Florida Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(p) Description of SMD 2B03 Boundaries

All streets are in the Northwest quadrant unless otherwise designated. Beginning at the intersection of 19th Street and Q Street; East on Q Street to 17th Street; North on 17th Street to S Street; East on S Street to 16th Street; North on 16th Street to Swann Street; West on Swann Street to New Hampshire Avenue; South on New Hampshire Avenue to Riggs Place; West on Riggs Place to 19th Street; South on 19th Street to Q Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 2B04 Boundaries

All streets are in the Northwest quadrant unless otherwise designated. Beginning at Q Street and 17th Street; East on Q Street to 15th Street; North on 15th Street to S Street; West on S Street to 17th Street; South on 17th Street to Q Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 2B05 Boundaries

All streets are in the Northwest quadrant unless otherwise designated. Beginning at Q Street and 17th Street; East on Q Street to 15th Street; South on 15th Street to Vermont Avenue on the west side of McPherson Square; South on Vermont Avenue to H Street; East on H Street to 15th Street; South on 15th Street to Pennsylvania Avenue; West on Pennsylvania Avenue to 17th Street; North on 17th Street to Connecticut Avenue; North on Connecticut Avenue to 18th Street; North on 18th Street to

Massachusetts Avenue; East on Massachusetts Avenue to 17th Street; North on 17th Street to Q Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 2B06 Boundaries

All streets are in the Northwest quadrant unless otherwise designated. Beginning at 22nd Street and P Street; South on 22nd Street to O Street; East on O Street to 21st Street; North on 21st Street to P Street; East on P Street to Hopkins Street; South on Hopkins Street to O Street; East on O Street to New Hampshire Avenue; South on New Hampshire Avenue to Sunderland Place; East on Sunderland Place to 19th Street; South on 19th Street to Jefferson Place; East on Jefferson Place to Connecticut Avenue; South on Connecticut Avenue to 17th Street; South on 17th Street to Pennsylvania Avenue; West on Pennsylvania Avenue to 20th Street; North on 20th Street to N Street; West on N Street to New Hampshire Avenue; South on New Hampshire Avenue to Ward Place; West on Ward Place to 22nd Street; North on 22nd Street to N Street; West on N Street and a line extending N Street west to Rock Creek; North on Rock Creek to P Street; East on P Street to 22nd Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 2B07 Boundaries

All streets are in the Northwest quadrant unless otherwise designated. Beginning at Q Street and 19th Street; East on Q Street to 17th Street; South on 17th Street to Massachusetts Avenue; West on Massachusetts Avenue to 18th Street; South on 18th Street to Connecticut Avenue; North on Connecticut Avenue to Dupont Circle; Counter-clockwise around Dupont Circle to 19th Street; North on 19th Street to Q Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 2B08 Boundaries

All streets are in the Northwest quadrant unless otherwise designated. Beginning at Florida Avenue and 19th Street; East along Florida Avenue to U Street; East on U Street to New Hampshire Avenue; South on New Hampshire Avenue to Swann Street; West on Swann Street to 19th Street; North on 19th Street to Florida Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(q) Description of SMD 2B09 Boundaries

All streets are in the Northwest quadrant unless otherwise designated. Beginning at 16th Street and U Street; East on U Street to 14th Street; South on 14th Street to S Street; West on S Street to 16th Street; North on 16th Street to Swann Street; West on Swann Street to New Hampshire Avenue; North on New Hampshire Avenue to 16th and U Streets.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of ANC 2C Boundaries

All streets are in the Northwest quadrant unless otherwise designated. Beginning at the intersection of 9th Street and P Street; South on 9th Street to M Street; West on M Street to 10th Street; South on 10th Street to L Street; East on L Street to 9th Street; South on 9th Street to H Street; West on H Street to 12th Street; South on 12th Street to Pennsylvania Avenue; Southeast on Pennsylvania Avenue to 10th Street; South on 10th Street, continuing on 10th Street, S.W. to Independence Avenue S.W.; East on Independence Avenue, S.W. to South Capitol Street; North on South Capitol Street and along a line extending South Capitol Street through the United States Capitol to Constitution Avenue; West on Constitution Avenue to Pennsylvania Avenue; West on Pennsylvania Avenue to 9th Street; North on 9th Street to E Street; East on E Street to 6th Street; North on 6th Street to New York Avenue; Northeast on New York Avenue to 4th Street; North on 4th Street to N Street; East on N Street to New Jersey Avenue; North on New Jersey Avenue to Florida Avenue; West on Florida Avenue to T Street; West on T Street to Wiltberger Street; South on Wiltberger Street to S Street; West on S Street to 11th Street; South on 11th Street to P Street; East on P Street to 9th Street.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(r) Description of SMD 2C01 Boundaries

All streets are in the Northwest quadrant unless otherwise designated. Beginning at the intersection of 11th and S Streets; South on 11th Street to P Street; East on P Street to 9th Street; South on 9th Street to N Street; East on N Street to 8th Street; North on 8th Street to O Street; East on O Street to 7th Street; North on 7th Street to Q Street; East on Q Street to Marion Street; North on Marion Street to Rhode Island Avenue; West on Rhode Island Avenue to 7th Street; North on 7th Street to S Street.; West on S Street to 11th Street.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(s) Description of SMD 2C02 Boundaries

All streets are in the Northwest quadrant unless otherwise designated. Beginning at the intersection of 7th Street and S Street; East on S Street to Wiltberger Street; North on Wiltberger Street to T Street; East on T Street to Florida Avenue; East on Florida Avenue to New Jersey Avenue; South on New Jersey Avenue to N Street; West on N Street to 5th Street; North on 5th Street to O Street; West on O Street to 7th Street; North on 7th Street to Q Street; East on Q Street to Marion Street; North on Marion Street to Rhode Island Avenue; West on Rhode Island Avenue to 7th Street; North on 7th Street to S Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 2C03 Boundaries

All streets are in the Northwest quadrant unless otherwise designated. Beginning at the intersection of 9th and N Streets; South on 9th Street to M Street; West on M Street to 10th Street; South on 10th Street to L Street; East on L Street to 9th Street; South on 9th Street to H Street; West on H Street to 12th Street; South on 12th Street to Pennsylvania Avenue; Southeast on Pennsylvania Avenue to 10th Street; South on 10th Street, continuing on 10th Street, S.W. to Independence Avenue S.W.; East on Independence Avenue, S.W. to South Capitol Street; North on South Capitol Street and along a line extending South Capitol Street through the United States Capitol to Constitution Avenue; West on Constitution Avenue to Pennsylvania Avenue; West on Pennsylvania Avenue to 9th Street; North on 9th Street to E Street; East on E Street to 6th Street; North on 6th Street to N Street; West on N Street to the point of beginning at its intersection with 9th Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 2C04 Boundaries

All streets are in the Northwest quadrant unless otherwise designated. Beginning at the intersection of 8th Street and O Streets; South on 8th Street to N Street; East on N Street to 6th Street; South on 6th Street to New York Avenue; East on New York Avenue to 4th Street; North on 4th Street to N Street; West on N Street to 5th Street; North on 5th Street to O Street; West on O Street to 8th Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 2D Boundaries

All streets are in the Northwest quadrant unless otherwise designated. Beginning at the intersection of Connecticut Avenue and Rock Creek; South on Connecticut Avenue to Florida Avenue; Southwest on Florida Avenue to 22nd Street; Southwest on 22nd Street to P Street; West on P Street to Rock Creek; North on Rock Creek to Connecticut Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 2D01 Boundaries

All streets are in the Northwest quadrant unless otherwise designated. Beginning at the intersection of Connecticut Avenue and Rock Creek; South on Connecticut Avenue to California Street; West on California Street to 23rd Street; South on 23rd Street to Bancroft Place; West on Bancroft Place to 24th Street; South on 24th Street to Massachusetts Avenue; Northwest on Massachusetts Avenue to Rock Creek; Northeast on Rock Creek to Connecticut Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 2D02 Boundaries

All streets are in the Northwest quadrant unless otherwise designated. Beginning at the intersection of Connecticut Avenue and California Street; South on Connecticut Avenue to Florida Avenue; Southwesterly on Florida Ave-

nue to 22nd Street; Southwesterly on 22nd Street to P Street; West on P Street to Rock Creek; North on Rock Creek to Massachusetts Avenue; Southeasterly on Massachusetts Avenue to 24th Street; North on 24th Street to Bancroft Place; East on Bancroft Place to 23rd Street; North on 23rd Street to California Street; East on California Street to Connecticut Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(t) Description of ANC 2E Boundaries

All streets are in the Northwest quadrant unless otherwise designated. Beginning at the intersection of the southern boundary of the eastern leg of Glover Archbold Park and the eastern boundary of Glover Archbold Park; South along the eastern boundary of Glover Archbold Park and along a line extending the eastern boundary of Glover Archbold Park south to the Commonwealth of Virginia shore of the Potomac River; South along the District of Columbia-Commonwealth of Virginia boundary to the western end of the Theodore Roosevelt Memorial Bridge; Northeast along a straight line from the western end of the Theodore Roosevelt Memorial Bridge to the mouth of Rock Creek; North along Rock Creek to the Massachusetts Avenue; Northeast along Massachusetts Avenue to Whitehaven Street; West on Whitehaven Street to the boundary of Dumbarton Oaks Park; West and north along the boundary of Dumbarton Oaks Park to Whitehaven Street; West on Whitehaven Street to Wisconsin Avenue; North on Wisconsin Avenue to 35th Street; South on 35th Street to Whitehaven Parkway; West on Whitehaven Parkway to the southern boundary of the eastern leg of Glover Archbold Park; West on said boundary to the eastern boundary of Glover Archbold Park.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 2E01 Boundaries

All streets are in the Northwest quadrant unless otherwise designated. Beginning at the intersection of the southern boundary of the eastern leg of Glover Archbold Park and the eastern boundary of Glover Archbold Park; South along the eastern boundary of Glover Archbold Park, continuing south across Reservoir Road as far as the midpoint of the Georgetown Medical Center service road just south of the New Research Building; East and south on said road so as to be south of the Lombardi Cancer Center and the Pasquerilla Health Center, as far as the midpoint of the existing campus road just east of the Leavey parking garage; North on said road to the intersection of 38th Street and Reservoir Road; East on Reservoir Road to 35th Street; North on 35th Street to R Street; East on R Street to Wisconsin Avenue; Northwest on Wisconsin Avenue to 35th Street; South on 35th Street to

Whitehaven Parkway; West on Whitehaven Parkway to 37th Street; West along the southern boundary of the eastern leg of Glover Archbold Park to the eastern boundary of Glover Archbold Park.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 2E02 Boundaries

All streets are in the Northwest quadrant unless otherwise designated. Beginning at the intersection of 38th Street and Reservoir Road; South on the existing Georgetown University campus road passing east of the Leavey parking garage to the northwest corner of the Reis Science Building; South and East from the corner of the Reis Science Building on the arc separating the Reis building and the Intercultural Center; East to the boundary between Georgetown University and the Georgetown Visitation School that lies directly north of the White Gravenor building following the boundary line East and South to P Street; East on P Street to 35th Street; North on 35th Street to Volta Place; East on Volta Place to Wisconsin Avenue; Northwest on Wisconsin Avenue to Q Street; East on Q Street to 32nd Street; Northwest on 32nd Street to Reservoir Road; West on Reservoir Road to Wisconsin Avenue; Northwest on Wisconsin Avenue to R Street; West on R Street to 35th Street; South on 35th Street to Reservoir Road; West on Reservoir Road to 38th Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 2E03 Boundaries

All streets are in the Northwest quadrant unless otherwise designated. Beginning at the intersection of 35th Street and Volta Place; East on Volta Place to Wisconsin Avenue; Southeast on Wisconsin Avenue to N Street; West on N Street to 36th Street; North on 36th Street to O Street; West on O Street to 37th Street; West on a line representing an extension of O Street to the midpoint of the existing campus road west of Harbin Hall; North and East on said road to the northwest corner of the Reis Science Building; South and East from the corner of the Reis Science Building on the arc separating the Reis building and the Intercultural Center, then East as far as the boundary with Georgetown Visitation School that lies directly north of the White Gravenor building; East and South on said property line as far as P Street; East on P Street to 35th Street; North on 35th Street to Volta Place.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 2E04 Boundaries

All streets are in the Northwest quadrant unless otherwise designated. Beginning at a point on the western boundary of Glover Archbold Park that corresponds to the midpoint of the Georgetown Medical Center service road just south of the New Research Building; East and South on said road so as to be south of the Lombardi Cancer Center and the

Pasquerilla Health Center, as far as the midpoint of the existing campus road just east of the Leavey parking garage; South and West on said road, so as to pass to the west of Harbin Hall, to a line representing the western extension of O Street; East on said line to 36th Street; South on 36th Street to Prospect Street; West on Prospect Street and a line representing its extension so as to follow the southern border of Census Tract 2.01 to the border of Glover Archbold Park; North on said border to the point of beginning.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 2E05 Boundaries

All streets are in the Northwest quadrant unless otherwise designated. Beginning at a point on the western boundary of Glover Archbold Park that intersects with a line representing the extension of Prospect Street that forms the southern border of Census Tract 2.01; East on said line to 37th Street; East on Prospect Street to 36th Street; North on 36th Street to N Street; East on N Street to Wisconsin Avenue; Southeast on Wisconsin Avenue to M Street; East on M Street to Pennsylvania Avenue; Southeast on Pennsylvania Avenue to Rock Creek; Southwest on Rock Creek to its mouth; Southwest along a straight line from the center of the mouth of Rock Creek to the western end of the Theodore Roosevelt Memorial Bridge; Northwest along the District of Columbia boundary line on the Virginia shore of the Potomac River to its intersection with a line extending the eastern boundary of Glover Archbold Park south to the Virginia shore of the Potomac River; North on said boundary to the point of beginning.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 2E06 Boundaries

All streets are in the Northwest quadrant unless otherwise designated. Beginning at the intersection of Wisconsin Avenue and Q Street; East on Q Street to 28th Street; South on 28th Street to P Street; East on P Street to Rock Creek; Southwest on Rock Creek to Pennsylvania Avenue; Northwest on Pennsylvania Avenue to M Street; West on M Street to Wisconsin Avenue; Northwest on Wisconsin Avenue to Q Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 2E07 Boundaries

All streets are in the Northwest quadrant unless otherwise designated. Beginning at the intersection of Wisconsin Avenue and Whitehaven Street; East on Whitehaven Street to the end; North and East on the boundary of Dumbarton Oaks Park to Whitehaven Street; East on Whitehaven Street to Massachusetts Avenue; Southeast on Massachusetts Avenue to Rock Creek; Southeast on Rock Creek to P Street; West on P Street to 28th Street; North on 28th Street to Q Street; West on Q Street to 32nd Street; North on 32nd Street to Reservoir

Road; West on Reservoir Road to Wisconsin Avenue; Northwest on Wisconsin Avenue to Whitehaven Street.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(u) Description of ANC 2F Boundaries

All streets are in the Northwest quadrant unless otherwise designated. Beginning at the intersection of S Street and 15th Street; South on 15th Street to Vermont Avenue; South on Vermont Avenue to H Street; East on H Street to 15th Street; South on 15th Street to Independence Avenue S.W.; East on Independence Avenue S.W. to 10th Street, S.W.; North on a line extending 10th Street, S.W. across the National Mall to Pennsylvania Avenue; West on Pennsylvania Avenue to 12th Street; North on 12th Street to H Street; East on H Street to 9th Street; North on 9th Street to L Street; West on L Street to 10th Street; North on 10th Street to M Street; East on M Street to 9th Street; North on 9th Street to P Street; West on P Street to 11th Street; North on 11th Street to S Street; West on S Street to 15th Street.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(v) Description of SMD 2F01 Boundaries

All streets are in the Northwest quadrant unless otherwise designated. Beginning at the intersection of 15th Street and S Street; South on 15th Street to P Street; East on P Street to 14th Street; South on 14th Street to Rhode Island Avenue; Northeast on Rhode Island Avenue to Logan Circle; clockwise around Logan Circle to 13th Street; North on 13th Street to S Street; West on S Street to 15th Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 2F02 Boundaries

All streets are in the Northwest quadrant unless otherwise designated. Beginning at the intersection of 15th Street and P Streets; South on 15th Street to N Street; East on N Street to Vermont Avenue; Northeast on Vermont Avenue to Logan Circle; clockwise around Logan Circle to Rhode Island Avenue; Southwest on Rhode Island Avenue to 14th Street; North on 14th Street to P Street; West on P Street to 15th Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 2F03 Boundaries

All streets are in the Northwest quadrant unless otherwise designated. Beginning at the intersection of N and 15th Streets; South on 15th Street to Vermont Avenue; South on Vermont to H Street; East on H Street to 15th Street; South on 15th Street to Independence Avenue S.W.; East on Independence Avenue, S.W. to 10th Street, S.W.; North on a line extending 10th Street, S.W. across the National Mall to Pennsylvania Avenue; West on Pennsylvania Avenue to 12th Street; North on 12th Street to Massachusetts Avenue; Northwest on Massachusetts Avenue to 13th Street; North on

13th Street to N Street; West on N Street to 15th Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 2F04 Boundaries

All streets are in the Northwest quadrant unless otherwise designated. Beginning at the intersection of Logan Circle and Rhode Island Avenue on the Northeast side of Logan Circle; Northeast on Rhode Island Avenue to 12th Street; South on 12th Street to O Street; East on O Street to 11th Street; South on 11th Street to N Street; West on N Street to 12th Street; South on 12th Street to M Street; West on M Street to 13th Street; North on 13th Street to N Street; West on N Street to Vermont Avenue; Northeast on Vermont Avenue to Logan Circle; clockwise around Logan Circle to the point of beginning.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 2F05 Boundaries

All streets are in the Northwest quadrant unless otherwise designated. Starting at the intersection of 13th and M Streets; South on 13th Street to Massachusetts Avenue; Southeast on Massachusetts Avenue to 11th Street; North on 11th Street to N Street; West on N Street to 12th Street; South on 12th Street to M Street; West on M Street to 13th Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 2F06 Boundaries

All streets are in the Northwest quadrant unless otherwise designated. Starting at the intersection of 13th Street and S Street; South on 13th Street to Logan Circle; clockwise on Logan Circle to Rhode Island Avenue; Northeast on Rhode Island Avenue to 12th Street; South on 12th Street to O Street; East on O Street to 11th Street; South on 11th Street to Massachusetts Avenue; Northwest on Massachusetts Avenue to 12th Street; South on 12th Street to H Street; East on H Street to 9th Street; North on 9th Street to L Street; West on L Street to 10th Street; North on 10th Street to M Street; East on M Street to 9th Street; North on 9th Street to P Street; West on P Street to 11th Street; North on 11th Street to S Street; West on S Street to 13th Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of ANC 3B Boundaries

All streets are in the Northwest quadrant. Starting at the intersection of Glover Archbold Parkway (closed) and Massachusetts Avenue; Southeast on Massachusetts Avenue to 39th Street; South on 39th Street to Fulton Street; East on Fulton Street to Wisconsin Avenue; South on Wisconsin Avenue to Calvert Street; East on Calvert Street to Observatory Circle—Naval Observatory property line; South and Southeast on said property line to Whitehaven Street; West on Whitehaven Street to Wisconsin Avenue; Northwest on Wisconsin Avenue to 35th Street; South on 35th Street to Whitehaven Parkway; West on Whitehaven

Parkway to the Southern Property line of the eastern leg of Glover Archbold Park; West on the southern boundary of the eastern leg of Glover Archbold Park to the western boundary of Glover Archbold Park to a line extending W Street east; West on said line to Glover Archbold Parkway (closed); North on Glover Archbold Parkway to New Mexico Avenue, Northwest on New Mexico Avenue to Cathedral Avenue; East on Cathedral Avenue to Glover Archbold Parkway (closed); Northeast Glover Archbold Parkway (closed) to Massachusetts Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(w) Description of SMD 3B01 Boundaries

All streets are in the Northwest quadrant. Starting at the Intersection of Tunlaw Road and Calvert Street; West on Calvert Street to 39th Street; North on 39th Street to Edmunds Street; West on Edmunds Street, and along a line extending Edmunds Street west, to Glover Archbold Parkway (closed); North on Glover Archbold Parkway (closed) to New Mexico Avenue; Southeast on New Mexico Avenue to the western property line of 2801 New Mexico Avenue; North on the western property line of 2801 New Mexico Avenue to the Southern property line of 4000 Cathedral Avenue; East on the Southern property line of 4000 Cathedral Avenue to Watson Place; Northeast on Watson Place to 39th Street; South on 39th Street to Fulton Street; East on Fulton Street to the western property line of 2730 Wisconsin Avenue; South on the western property line of 2730 Wisconsin Avenue to the rear property line of Fulton Street; West on the rear property line of Fulton Street to 39th Street; South on 39th Street extended to Tunlaw Road; South East on Tunlaw Road to Calvert Street.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(x) Description of SMD 3B02 Boundaries

All streets are in the Northwest quadrant. Starting at the intersection of Fulton Street and Wisconsin Avenue; South on Wisconsin Avenue to Calvert Street; East on Calvert Street to Observatory Circle—Naval Observatory property line; South and Southeast on said property line to the Dumbarton Oaks property line; South on said property line to Whitehaven Street; West on Whitehaven Street to Wisconsin Avenue; Northwest on Wisconsin Avenue to 35th Street; South on 35th Street to Whitehaven Parkway; West on Whitehaven Parkway to 37th Street; North on 37th Street to Tunlaw Road; Northwest on Tunlaw to 39th Street extension; North on 39th Street Extension to the rear property line of 3840 Fulton Street; East on the rear property lines of 3840-3706 Fulton Street to Wisconsin Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(y) Description of SMD 3B03 Boundaries

All streets are in the Northwest quadrant. Starting at the intersection of 42nd Street and Edmunds; East on Edmunds to 39th Street; Southeast on 39th Street to Calvert Street; West on Calvert Street to 40th Street; South on 40th Street to W Street; West on W Street, and along a line extending W Street, to Glover Archbold Parkway (closed); North along Glover Archbold Parkway (closed) to a line extending Edmunds Street west; East along said line to the intersection of 42nd and Edmunds Street.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(z) Description of SMD 3B04 Boundaries

All streets are in the Northwest quadrant. Starting at the intersection of Glover Archbold Parkway (closed) and Massachusetts Avenue; Southeast on Massachusetts Avenue to 39th Street; South on 39th Street to Watson Place; Southwest on Watson Place to the southern property line of 4000 Cathedral Avenue; West on the southern property line of 4000 Cathedral Avenue to the western property line of 2801 New Mexico Avenue; Southeast on the western property line on 2801 New Mexico Avenue to New Mexico Avenue; Northwest on New Mexico Avenue to Cathedral Avenue; East on Cathedral Avenue to Glover Archbold Parkway (closed); Northeast on Glover Archbold Parkway (closed) to Massachusetts Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(aa) Description of SMD 3B05 Boundaries

All streets are in the Northwest quadrant. Starting at the intersection of Calvert Street and Tunlaw Road; Southeast on Tunlaw Road to 37th Street; South on 37th Street to the southern property line of the eastern leg of Glover Archbold Park; West on the southern boundary of the eastern leg of Glover Archbold Park to the western boundary of the eastern leg of Glover Archbold Park; North on western boundary of the eastern leg of Glover Archbold Park to a line extending W Street east; East on said line to W Street; East on W Street to 40th Street; North on 40th Street to Calvert Street; East on Calvert Street to Tunlaw Road.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(bb) Description of ANC 3C Boundaries

All streets are in the Northwest quadrant. Beginning at Rock Creek and Connecticut Avenue; northerly on Rock Creek to Melvin Hazed Creek; West on Melvin Hazed Creek to the northeast corner, 3601 Connecticut Avenue (the Broadmoor); Around the property line of the Broadmoor to the southwest corner of Connecticut Avenue and Porter Street; West on Porter to the alley running northwest between Porter and Rodman Streets, and behind the apart-

ment buildings on Connecticut Avenue, to the north side of Rodman Street; East on Rodman to Connecticut Avenue; North on Connecticut Avenue to Melvin Hazen Park; West (above the real property line of Rodman Street houses) to 34th Street; West on the ridge behind the real property line of houses on the north side of Rodman Street, which is the northern boundary of the Cleveland Park Historic District, to Idaho Street; Southwest on Idaho Street to Quebec Street; West on Quebec Street to 37th Street; North on 37th Street to the northern property line of Sidwell Friends School; West at the property line between Sidwell Friends School and the Washington Home to Wisconsin Avenue; Northwest on Wisconsin Avenue to Van Ness Street; West on Van Ness Street to Glover Archbold Parkway; South on Glover Archbold Parkway (including the portion now closed) to Massachusetts Avenue; Southeast on Massachusetts Avenue to 39th Street; South on 39th to Fulton Street; East on Fulton Street to Wisconsin Avenue; South on Wisconsin Avenue to Calvert Street; East on Calvert Street to Observatory Circle; South and East on Observatory Circle to Whitehaven Parkway; East on Whitehaven Parkway to Massachusetts Avenue; Southeast on Massachusetts Avenue to Rock Creek; Northeast on Rock Creek to Connecticut Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 3C01 Boundaries

All streets are in the Northwest quadrant. Beginning at Rock Creek and Connecticut Avenue; Northerly on Rock Creek to Klinge Road; West on Klinge Road to Connecticut Avenue; Southeast on Connecticut Avenue to Rock Creek.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 3C02 Boundaries

All streets are in the Northwest quadrant. Beginning at Rock Creek and Connecticut Avenue; North on Connecticut Avenue to Cathedral Avenue; West on Cathedral Avenue to 27th Street; South on 27th Street to Woodley Road; West on Woodley Road to Garfield Street; West on Garfield Street to 31st Street; South on 31st Street to Cleveland Avenue; Southeast on Cleveland Avenue and East on Calvert Street to 28th Street; South on 28th Street to Rock Creek Drive; Southwest on Rock Creek Drive to Massachusetts Avenue; South on Massachusetts Avenue to Rock Creek; East on Rock Creek to its point of intersection with Connecticut Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(cc) Description of SMD 3C03 Boundaries

All streets are in the Northwest quadrant. Beginning at the intersection of Connecticut Avenue and Cathedral Avenue; Northwest on Connecticut Avenue to Klinge Road; West on Klinge Road to Woodley Road and 32nd Street;

South on 32nd Street to Cleveland Avenue; Southeast on Cleveland Avenue to 31st Street; North on 31st Street to Garfield Street; East on Garfield Street to Woodley Road; East on Woodley Road to 27th Street; North on 27th Street to Cathedral Avenue; East on Cathedral Avenue to Connecticut Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(dd) Description of SMD 3C04 Boundaries

All streets are in the Northwest quadrant. Beginning at the intersection of Connecticut Avenue and Klinge Road; East on Klinge Road to Rock Creek; North and West on Rock Creek to Melvin Hazed Creek; West on Melvin Hazed Creek to the northeast corner, 3601 Connecticut Avenue (the Broadloom); South on the east boundary of 3601 Connecticut Avenue to Quebec Street; West on Quebec Street to Porter Street; West on Porter Street to Connecticut Avenue; Southeast on Connecticut Avenue to Klinge Road.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(ee) Description of SMD 3C05 Boundaries

All streets are in the Northwest quadrant. Beginning at southern border of Melvin Hazed Park and Connecticut Avenue; West (above the real property line of Rodman Street houses) to Reno Road; West on the ridge behind the real property line of houses on the north side of Rodman Street, which is the northern boundary of the Cleveland Park Historic District, to Idaho Avenue; Southwest on Idaho Street to Quebec Street; West on Quebec Street to Wisconsin Avenue; Southeast on Wisconsin Avenue to Porter Street; East on Porter Street to 36th Street; South on 36th Street to Ordway Street; East on Ordway Street to 34th Street; South on 34th Street to Newark Street; East on Newark Street to Connecticut Avenue; Northwest on Connecticut Avenue to Porter Street; East on Porter Street to Quebec Street; East on Quebec Street to a point opposite the eastern property line of the Broadloom (3601 Connecticut Avenue); Counter-clockwise around the property line of the Broadloom to the intersection of Connecticut Avenue and Porter Street at the southwest corner of the Broadloom property; Southwest across the intersection to Porter Street at the western edge of the Connecticut Avenue right of way; West on Porter to the alley running northwest between Porter and Rodman Streets, and behind the apartment buildings on Connecticut Avenue, to the north side of Rodman Street; East on Rodman to Connecticut Avenue; North on Connecticut Avenue to Melvin Hazed Park.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(ff) Description of SMD 3C06 Boundaries

All streets are in the Northwest quadrant. Beginning at the intersection of Wisconsin Av-

enue, and Van Ness Street; West on Van Ness Street to Glover Archbold Parkway; South on Glover Archbold Parkway (including the portion now closed) to Macomb Street; East on Macomb Street to Idaho Avenue; Northeast on Idaho Avenue to Newark Street; East on Newark Street to Wisconsin Avenue; Northeast on Wisconsin Avenue to Quebec Street; East on Quebec Street to 37th Street; North on 37th Street to the northern property line of Sidwell Friends School; West at the property line between Sidwell Friends School and the Washington Home to Wisconsin Avenue; Northwest on Wisconsin Avenue to Van Ness Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 3C07 Boundaries

All streets are in the Northwest quadrant. Beginning at Woodley Road NW and 34th Street; West on Woodley Road to Wisconsin Avenue; North on Wisconsin Avenue to Newark Street; West on Newark Street to Idaho Avenue; Southwest on Idaho Avenue to Macomb Street; West on Macomb Street to Massachusetts Avenue; Southeast on Massachusetts Avenue to 39th Street; South on 39th Street to Fulton Street; East on Fulton Street to 38th Street; North on 38th Street to Garfield Street; East on Garfield Street to 34th Street; North on 34th Street to Woodley Road.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 3C08 Boundaries

All streets are in the Northwest quadrant. Beginning at Cleveland Avenue and 29th Street; Northwest on Cleveland Avenue to 32nd Street; North on 32nd Street to Woodley Road; West on Woodley Road to 34th Street; South on 34th Street to Garfield Street; West on Garfield Street to 38th Street; South on 38th Street to Fulton Street; East on Fulton Street to Wisconsin Avenue; South on Wisconsin Avenue to Calvert Street; East on Calvert Street to Observatory Circle; South and East on Observatory Circle to Whitehaven Parkway; East on Whitehaven Parkway to Massachusetts Avenue; Southeast on Massachusetts Avenue to Rock Creek Drive; Northeast on Rock Creek Drive to 28th Street; Northwest on 28th Street to Calvert Street; West on Calvert Street to 29th Street and its intersection with Cleveland Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 3C09 Boundaries

All streets are in the Northwest quadrant. Beginning at Klinge Road and Connecticut Avenue; Northwest on Connecticut Avenue to Newark Street; West on Newark Street to 34th Street; North on 34th Street to Ordway Street; West on Ordway Street to 36th Street; North on 36th Street to Porter Street; West on Porter Street to Wisconsin Avenue; South on Wisconsin Avenue to Woodley Road; East on Woodley Road and Klinge Road to Connecticut Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of ANC 3D Boundaries

All streets are in the Northwest quadrant. Beginning at the intersection of Massachusetts Avenue and Westmoreland Circle; Clockwise around Westmoreland Circle to the Maryland-District of Columbia boundary; Southwest on the District of Columbia-Maryland boundary line to point that line meets the border with the Commonwealth of Virginia; Southeast along the District of Columbia-Commonwealth of Virginia boundary to a line extending the eastern boundary of Glover Archbold Park south to the Commonwealth of Virginia shore of the Potomac River; North along the eastern boundary of Glover Archbold Park to a line extending W Street east; West on said line to Glover Archbold Parkway (closed); North on Glover Archbold Parkway to New Mexico Avenue; North on New Mexico Avenue to Cathedral Avenue; East on Cathedral Avenue to Glover Archbold Parkway (closed); North on Glover Archbold Parkway (closed) to Massachusetts Avenue; Northwest on Massachusetts Avenue to the property line of 4100 Massachusetts Avenue; Southwest on said property line to the rear property line of 4100 Massachusetts Avenue; Northwest along the rear property line of 4100 Massachusetts Avenue to the Northern property line of 4100 Massachusetts Avenue; Northeast along the northern property line of 4100 Massachusetts Avenue to Massachusetts Avenue; Northwest on Massachusetts Avenue to the point of beginning.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(gg) Description of SMD 3D01 Boundaries

All streets are in the Northwest quadrant. Beginning at the intersection of Foxhall Road and W Street; North on Foxhall Road to Foxhall Crescent Drive; West and North on Foxhall Crescent Drive to the boundary between 4512 and 4514 Foxhall Crescent Drive; West on the boundary between 4512 and 4514 Foxhall Crescent Drive to Foxhall Crescent Drive; West on Foxhall Crescent Drive to 49th Street; North on 49th Street to Edmunds Street extended; West through Battery Kimble Park to Chain Bridge Road; Northeast on the western boundary Battery Kimble Park to Loughboro Road; Northeast on Loughboro Road and Nebraska Avenue to New Mexico Avenue; Southeast on New Mexico Avenue to Westover Place; Northeast on Westover Place to Massachusetts Avenue; Southeast on Massachusetts Avenue to Embassy Park Drive; West on Embassy Park Drive to the intersection of New Mexico Avenue and 44th Street; South on 44th Street to Cathedral Avenue; East on Cathedral Avenue to New Mexico Avenue; Southeast of New Mexico Avenue to Glover Archbold Parkway (closed); South on Glover Archbold Parkway to W Street

extended; West on W Street to the intersection of W Street and Foxhall Road.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(hh); Jun. 12, 2003, D.C. Law 14-310, § 18(a) Description of SMD 3D02 Boundaries

All streets are in the Northwest quadrant. Beginning at the intersection of New Mexico Avenue and Westover Place; Northeast on Westover Place to Massachusetts Avenue; Northwest on Massachusetts Avenue through the center of Ward Circle to Upton Street; West on Upton Street to 48th Street; South on 48th Street to Quebec Street; West on Quebec Street to 49th Street; South on 49th Street to Glenbrook Road; Southeast on Glenbrook Road to University Drive (a proposed street); Northeast on University Drive to Quebec Street; Southeast through the AU campus on a line extending from the intersection of University Drive and Quebec Street to the intersection of Nebraska Avenue and New Mexico Avenue; Southeast on New Mexico Avenue to Westover Place.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 3D03 Boundaries

All streets are in the Northwest quadrant. Beginning at the intersection of Massachusetts Avenue and Upton Street; North on Massachusetts Avenue to Westmoreland Circle; Clockwise around Westmoreland Circle to the Maryland-District of Columbia boundary; Southwest on the Maryland-District of Columbia boundary to MacArthur Boulevard; South on MacArthur Boulevard to Little Falls Road; East on Little Falls Road to Dalecarlia Parkway; Southwest on Dalecarlia Parkway to Loughboro Road; East on Loughboro Road to Indian Lane; Northwest on Indian Lane to Rockwood Parkway; East on Rockwood Parkway to Glenbrook Road; Northwest on Glenbrook Road to 49th Street; North on 49th Street to Quebec Street; East on Quebec Street to 48th Street; North on 48th Street to Upton Street; East on Upton Street to the intersection of Upton Street and Massachusetts Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(ii) Description of SMD 3D04 Boundaries

All streets are in the Northwest quadrant. Beginning at the District of Columbia-Maryland border on MacArthur Boulevard; South on MacArthur Boulevard to Little Falls Road; East on Little Falls Road to Dalecarlia Parkway; Southwest on Dalecarlia Parkway to Loughboro Road; East on Loughboro Road to Arizona Avenue; Southwest on Arizona Avenue to MacArthur Boulevard; Northwest on MacArthur Boulevard to Galena Place; Southwest on Galena Place and a line extending Galena Place to the Virginia shore of the Potomac River; North on the Virginia shore of the Potomac River to the intersection of the District

of Columbia-Maryland border; Northeast on the District of Columbia-Maryland border to MacArthur Boulevard.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 3D05 Boundaries

All streets are in the Northwest quadrant. Beginning at the intersection of MacArthur Boulevard and Whitehaven Parkway; Southwest on Whitehaven Parkway and on a line extending Whitehaven Parkway to the Virginia shore of the Potomac River; North on the Virginia shore of the Potomac River to a line extending Galena Place to the Virginia shore of the Potomac River; East on said extension and on Galena Place to MacArthur Boulevard; South on MacArthur Boulevard to Arizona Avenue; Northeast on Arizona Avenue to Loughboro Road; East on Loughboro Road to Chain Bridge Road; South on Chain Bridge Road to a line extending Edmunds Street west to Chain Bridge Road; East on said line to 49th Street; South on 49th Street to W Street; East on W Street to 48th Street; South on 48th Street to U Street; West on U Street to MacArthur Boulevard; South on MacArthur Boulevard to the intersection with Whitehaven Parkway.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 3D06 Boundaries

All streets are in the Northwest quadrant. Beginning at the intersection of Foxhall Road and Foxhall Crescent Drive; South on Foxhall Road to Salem Lane; West on Salem Lane to 45th Street; South on 45th Street to Q Street; Southwest on Q Street to MacArthur Boulevard; Northwest on MacArthur Boulevard to U Street; East on U Street to 48th Street; North on 48th Street to W Street; West on W Street to 49th Street; North on 49th Street to Foxhall Crescent Drive; East on Foxhall Crescent Drive and a line drawn between 4512 and 4514 Foxhall Crescent Drive to Foxhall Crescent Drive; South and East on Foxhall Crescent Drive to Foxhall Road.

May 10, 2002, D.C. Law 14-133, § 2(a); Jun. 12, 2003, D.C. Law 14-310, § 18(a) Description of SMD 3D07 Boundaries

All streets are in the Northwest quadrant. Beginning at the intersection of New Mexico Avenue and Nebraska Avenue; Southwest on Nebraska Avenue to Indian Lane; Northwest on Indian Lane to Rockwood Parkway; East on Rockwood Parkway to Glenbrook Road; North on Glenbrook Road to University Drive (a proposed street); Northeast on University Drive to Quebec Street; Southeast at University Drive and Quebec Street, along a line connecting that intersection to the intersection of Nebraska Avenue and New Mexico Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 3D08 Boundaries

All streets are in the Northwest quadrant. Beginning at the intersection of 44th Street

and Embassy Park Drive; Northeast on Embassy Park Drive to Massachusetts Avenue; Southeast on Massachusetts Avenue to the northern property line of 4100 Massachusetts Avenue; Southwest on the northern property line of 4100 Massachusetts Avenue to the rear property line of 4100 Massachusetts Avenue; Southeast on the rear property line of 4100 Massachusetts Avenue to the southern property line of 4100 Massachusetts Avenue; Northeast on said property line to Massachusetts Avenue; Southeast on Massachusetts Avenue to Glover Archbold Parkway; South on Glover Archbold Parkway to Cathedral Avenue; West on Cathedral Avenue to 44th Street; North on 44th Street to the intersection with New Mexico Avenue and Embassy Park Drive.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 3D09 Boundaries

All streets are in the Northwest quadrant. Beginning at the intersection of W Street and Foxhall Road; East on an extended line of W Street through Glover Archbold Park; continuing Southeast on the eastern boundary of Glover Archbold Park and along a line extending the eastern boundary of Glover Archbold Park south to the Commonwealth of Virginia shore of the Potomac River; Northwest on the District of Columbia-Commonwealth of Virginia boundary to a point intersecting with a line extending Whitehaven Parkway across the Potomac River; East on Whitehaven to MacArthur Boulevard; Southeast on MacArthur to Q Street; Northeast on Q Street to 45th Street; North on 45th Street to Salem Lane; East on Salem Lane to Foxhall Road; North on Foxhall Road to the intersection of Foxhall Road and W Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of ANC 3E Boundaries

All streets are in the Northwest quadrant. Beginning at the intersection of Van Ness Street and Glover Archbold Parkway; South on Glover Archbold Parkway (including the portion now closed) to Massachusetts Avenue; Northwest on Massachusetts Avenue to the property line of 4100 Massachusetts Avenue; Southwest on said property line to the rear property line of 4100 Massachusetts Avenue; Northwest along the rear property line of 4100 Massachusetts Avenue to the northern property line of 4100 Massachusetts Avenue; Northeast along the northern property line of 4100 Massachusetts Avenue to Massachusetts Avenue; Northwest on Massachusetts Avenue to Westmoreland Circle; Clockwise around Westmoreland Circle to the Maryland-District of Columbia boundary; Northeast on the Maryland-District of Columbia boundary to Western Avenue; Northeast on Western Avenue to 41st Street; South on 41st Street to the junction with Reno Road; Southeasterly on Reno Road to the junction with Fessenden Street, from this

point a straight southwesterly line to the centerline of the terminus of Howard street; Southwest on Howard to the intersection with Fort Drive; West on Fort Drive to the centerline of a trail, bearing S 27 degree W, then on the trail to Chesapeake Street; West on Chesapeake to 40th Street; South on 40th Street to Brandywine Street; West on Brandywine Street to Wisconsin Avenue; South on Wisconsin Avenue to Nebraska Avenue; South on Nebraska Avenue to Van Ness Street; East on Van Ness Street to the point of beginning.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(jj) Description of SMD 3E01 Boundaries

All streets are in the Northwest quadrant. Beginning at the corner of 42nd Street and Albemarle Street; South on 42nd Street to Van Ness Street; West on Van Ness Street to 45th Street; Southwesterly on 45th Street to Massachusetts Avenue; Northwest on Massachusetts Avenue to Albemarle Street; East on Albemarle to point of beginning.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 3E02 Boundaries

All streets are in the Northwest quadrant. Beginning at the intersection of Western Avenue and River Road; Southeasterly on River Road to the intersection with 46th Street; South on 46th Street to Ellicott Street; East on Ellicott to 45th Street; South on 45th Street to Davenport Street; East on Davenport Street to 44th Street; South on 44th Street to Albemarle Street; West on Albemarle Street to Massachusetts Avenue; Northwest on Massachusetts Avenue to Westmoreland Circle; Clockwise around Westmoreland Circle to the Maryland-District of Columbia boundary; Northeast on the Maryland-District of Columbia boundary to Western Avenue; Northeast on Western Avenue to point of beginning.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(kk) Description of SMD 3E03 Boundaries

All streets are in the Northwest quadrant. Beginning at the intersection of Western and Wisconsin Avenues; Southeasterly on Wisconsin to Nebraska Avenue; Southwest on Nebraska Avenue to Van Ness Street; West on Van Ness Street to 42nd Street; North on 42nd Street to Albemarle Street; West on Albemarle to 44th street; North on 44th Street to Davenport Street; West on Davenport to 45th Street; North on 45th Street to Ellicott Street; West on Ellicott Street to 46th Street; North on 46th Street to River Road; Northwest on River Road to Western Avenue; Northeast on Western Avenue to point of beginning.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 3E04 Boundaries

All streets are in the Northwest quadrant. Beginning at the corner of 41st Street and Western Avenue; South on 41st Street to the

junction with Reno Road; Southeasterly on Reno Road to the junction with Fessenden Street. From this point a straight southwesterly line to the centerline of the terminus of Howard street; Southwest on Howard to the intersection with Fort Drive. West on Fort Drive to the centerline of a trail, bearing S 27 degree W, then on the trail to Chesapeake Street. West on Chesapeake to 40th Street; South on 40th Street to Brandywine Street; West on Brandywine Street to Wisconsin Avenue; North on Wisconsin Avenue to Western Avenue; Northeast on Western Avenue to the point of the beginning.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 3E05 Boundaries

All streets are in the Northwest quadrant. Beginning at the intersection of Van Ness Street and Glover Archbold Parkway; South on Glover Archbold Parkway (including the portion now closed) to Massachusetts Avenue; Northwest on Massachusetts Avenue to the property line of 4100 Massachusetts Avenue; Southwest on said property line to the rear property line of 4100 Massachusetts Avenue; Northwest along the rear property line of 4100 Massachusetts Avenue to the northern property line of 4100 Massachusetts Avenue; Northeast along the northern property line of 4100 Massachusetts Avenue to Massachusetts Avenue; Northwest on Massachusetts Avenue through Ward Circle to 45th Street; Northeast on 45th Street to Van Ness Street; East on Van Ness to the point of beginning.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of ANC 3F Boundaries

All streets are in the Northwest quadrant. Beginning at Nebraska Avenue and Nevada Avenue; South on Nevada Avenue to Broad Branch Road; East and South on Broad Branch Road to 27th Street; North on 27th Street to Military Road; East on Military Road to Rock Creek; South on Rock Creek to the confluence of the Melvin C. Hazed Tributary; West on the bed of that stream to a theoretical eastward continuation of the lot line separating 3601 Connecticut Avenue (to the south) from 3701 Connecticut Avenue (to the north) to and on that lot line to Connecticut Avenue; South on Connecticut Avenue to Porter Street; West on Porter Street to the rear lot line of 3601 Connecticut Avenue; North on that rear lot line and rear lot lines of 3614, 3616, 3618, 3620, 3624 and 3628 Connecticut Avenue and the eastern lot line of 3002 Rodman Street to Rodman Street; East on Rodman Street to the eastern lot line of 3700 Connecticut Avenue; West on that lot line to its end and continuing west on the northern lot lines of the homes in the 3000 block of Rodman Street (##3009—3035), to the western lot line of 3035 Rodman Street; South on that lot line to Rodman Street; West on Rodman Street to Reno Road; North on Reno Road to the north-

ern lot line of 3403 Rodman Street; West on the northern lot lines of homes in the 3400 and 3500 blocks of Rodman Street (##3403—3519) to the western lot line of 3519 Rodman Street; South on that lot line to Rodman Street; West on Rodman Street as it curves into Idaho Avenue; South on Idaho Avenue to Quebec Street; West on Quebec Street to 37th Street; North on 37th Street to the southern lot line of 3720 Upton Street (the Washington Home and Hospice Center); West on that lot line and the southern lot line of the United States Post Office to Wisconsin Avenue; North on Wisconsin Avenue to Van Ness Street; West on Van Ness Street to Nebraska Avenue; North on Nebraska Avenue to Wisconsin Avenue; North on Wisconsin Avenue to Brandywine Street; East on Brandywine Street to 40th Street; North on 40th Street to Chesapeake Street; East on Chesapeake Street and Northeast on gravel path (roughly parallel to Nebraska Avenue and marked on some maps as “DeRussey Street” and as continuing where Fort Drive appears on street signage) and then turning East on Fort Drive paved street in front (south) of Deal Junior High School to Howard Street; North on Howard Street to the end of the paving and then North on a theoretical line to the junction of Reno Road and Fessenden Street; South on Reno Road to Nebraska Avenue; North on Nebraska Avenue to the point of beginning.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 3F01 Boundaries

All streets are in the Northwest quadrant. Beginning at Wisconsin Avenue and Upton Street; East on Upton Street to 37th Street; North on 37th Street to Windom Place; East on Windom Place to Reno Road; North on Reno Road to Appleton Street; East on Appleton Street to Connecticut Avenue; South on Connecticut Avenue to public alley north of 4310 Connecticut Avenue; West on northern lot line of 4310 Connecticut Avenue to its western end; South on western lot lines of 4310, 4304, 4300 and 4250 Connecticut Avenue; East on that lot line and on Veazey Terrace to Connecticut Avenue; South on Connecticut Avenue to Rodman Street; West on Rodman Street to the eastern lot line of 3700 Connecticut Avenue; North on that lot line and continuing west on the northern lot lines of the homes in the 3000 block of Rodman Street (##3009—3035), to the western lot line of 3035 Rodman Street; South on that lot line to Rodman Street; West on Rodman Street to Reno Road; North on Reno Road to the northern lot line of 3403 Rodman Street; West on the northern lot lines of homes in the 3400 and 3500 blocks of Rodman Street (##3403—3519) to the western lot line of 3519 Rodman Street; South on that lot line to Rodman Street; West on Rodman Street as it curves into Idaho Avenue; South on Idaho Avenue to Quebec Street; West on Quebec Street to 37th Street;

North on 37th Street to the southern lot line of 3720 Upton Street (the Washington Home and Hospice Center); West on that lot line and the southern lot line of the United States Post Office to Wisconsin Avenue; North on Wisconsin Avenue to Upton Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 3F02 Boundaries

All streets are in the Northwest quadrant. Beginning at Connecticut Avenue and Windom Place; East on Windom Place to Soapstone Valley Park; East on southern boundary of Soapstone Valley Park to eastern lot line of 2900 Van Ness Street (Howard University Law School); South on the lot line to northern lot line of 2801 Upton Street (Levine School of Music); East on that lot line to Upton Street, follow Upton Street as it curves south and then west to western lot line of 2900 Van Ness Street (Howard University Law School); North on that lot line to Van Ness Street; West on Van Ness Street to Connecticut Avenue; North on Connecticut Avenue to Veazey Terrace; Across Connecticut Avenue to southern lot line of 4250 Connecticut Avenue; West on that lot line to western lot line of 4250 Connecticut Avenue; North on the lot lines of 4250, 4300, 4304 and 4310 Connecticut Avenue to the northern lot line of 4310 Connecticut Avenue; East on that lot line to Connecticut Avenue; Across Connecticut Avenue and South on Connecticut Avenue to Windom Place.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 3F03 Boundaries

All streets are in the Northwest quadrant. Beginning at Nebraska Avenue and Nevada Avenue; South on Nevada Avenue to Broad Branch Road; East and South on Broad Branch Road to 27th Street; North on 27th Street to Military Road; East on Military Road to Rock Creek; South on Rock Creek to confluence with Broad Branch; North (upstream) on bed of Broad Branch to confluence with Soapstone Creek; West (upstream) on bed of Soapstone Creek to the eastern boundary of Soapstone Valley Park; South on that boundary to the southern boundary of Soapstone Valley Park; West on that boundary to Windom Place; West on Windom Place to Connecticut Avenue; North on Connecticut Avenue to the lot line between 4501 Connecticut Avenue (The Albemarle) and 4545 Connecticut Avenue (The Brandywine) that is also a theoretical extension of Appleton Street between Connecticut Avenue and 32nd Street; East on that lot line to 32nd Street and Appleton Street; East on Appleton Street to 31st Street; North on 31st Street to Gates Road; West on Gates Road to Chesapeake Street; West on Chesapeake Street to 32nd Street; North on 32nd Street to Ellicott Street; West on Ellicott Street to east lot line of The Methodist Home (4901 Connecticut Avenue); North on that lot line to Fessenden Street and 34th

Street; North on 34th Street to Garrison Street; West on Garrison Street to 36th Street; South on 36th Street to public alley behind 5001 block of Connecticut Avenue; North on the alley to Nebraska Avenue; North on Nebraska Avenue to Nevada Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 3F04 Boundaries

All streets are in the Northwest quadrant. Beginning at Connecticut Avenue and Davenport Street; East on Davenport Street to 32nd Street; South on 32nd Street to Chesapeake Street; East on Chesapeake Street to Gates Road; East on Gates Road to 31st Street; South on 31st Street to Appleton Street; West on Appleton Street to 32nd Street; West on a theoretical extension of Appleton Street (also the lot line between 4501 and 4545 Connecticut Avenue) to Connecticut Avenue; Across Connecticut Avenue to Appleton Street; West on Appleton Street to 36th Street; North on 36th Street to Cumberland Street; East on Cumberland Street to Connecticut Avenue; North on Connecticut Avenue to Davenport Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 3F05 Boundaries

All streets are in the Northwest quadrant. Beginning at Nebraska Avenue and Reno Road; North on Nebraska Avenue to southern lot line of 5115 Nebraska Avenue (the Pepco substation); South on the alley behind the 5001 block of Connecticut Avenue to 36th Street; North on 36th Street to Garrison Street; East on Garrison Street to 34th Street; South on 34th Street to Fessenden Street; South on a theoretical extension of 34th Street which is also the east lot line of 4901 Connecticut Avenue (The Methodist Home) to Ellicott Street; East on Ellicott Street to 32nd Street; South on 32nd Street to Davenport Street; West on Davenport Street to Connecticut Avenue; South on Connecticut Avenue to Cumberland Street; West on Cumberland Street to Reno Road; North on Reno Road to Nebraska Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(l) Description of SMD 3F06 Boundaries

All streets are in the Northwest quadrant. Beginning at Wisconsin Avenue and Brandywine Street; East on Brandywine Street to 40th Street; North on 40th Street to Chesapeake Street; East on Chesapeake Street to and Northeast on gravel path (roughly parallel to Nebraska Avenue and marked on some maps as "DeRussey Street" and as continuing where Fort Drive appears on street signage) and then turning East on Fort Drive paved street in front (south) of Deal Junior High School to Howard Street; North on Howard Street to the end of the paving and then North on a theoretical line to the junction of Reno Road and Fessenden Street; South on Reno Road to Cumberland Street; East on Cumberland Street to 36th

Street; South on 36th Street to Appleton Street; West on Appleton Street to Reno Road; South on Reno Road to Windom Place; West on Windom Place to 37th Street; South on 37th Street to Upton Street; West on Upton Street to Wisconsin Avenue; North on Wisconsin Avenue to Van Ness Street; West on Van Ness Street to Nebraska Avenue; North on Nebraska Avenue to Wisconsin Avenue; North on Wisconsin Avenue to Brandywine Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 3F07 Boundaries

All streets are in the Northwest quadrant. Beginning at Connecticut Avenue and Van Ness Street; East on Van Ness Street to the western lot line of 2900 Van Ness Street (Howard University Law School); South on that lot line to Upton Street; East on Upton Street and curving northward to the northern lot line of 2801 Upton Street (Levine School of Music); West on that lot line to the eastern lot line of 2900 Van Ness Street (Howard University Law School); North on that lot line to southern boundary of Soapstone Valley Park; East on that boundary to the eastern boundary of that Park; North on that Park boundary to Soapstone Creek; East (downstream) on the bed of Soapstone Creek to its confluence with Broad Branch; South (downstream) on the bed of Broad Branch to its confluence with Rock Creek; South on Rock Creek to the confluence of the Melvin C. Hazed Tributary; West on the bed of that stream to a theoretical eastward continuation of the lot line separating 3601 Connecticut Avenue (to the south) from 3701 Connecticut Avenue (to the north) to and on that lot line to Connecticut Avenue; South on Connecticut Avenue to Porter Street; West on Porter Street to the rear lot line of 3601 Connecticut Avenue; North on that rear lot line and rear lot lines of 3614, 3616, 3618, 3620, 3624 and 3628 Connecticut Avenue and 3002 Rodman Street to Rodman Street; East on Rodman Street to Connecticut Avenue; North on Connecticut Avenue to Van Ness Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of ANC 3G Boundaries

All streets are in the Northwest quadrant. Beginning at Military Road and 27th Street; East on Military Road to Rock Creek; North on Rock Creek to Western Avenue; Southwest on Western Avenue to 41st Street; South on 41st Street to Military Road; East on Military Road to Reno Road; South on Reno Road to Nebraska Avenue; Northeast on Nebraska Avenue to Nevada Avenue; East on Nevada Avenue to Broad Branch Road; East on Broad Branch Road to 27th Street; North on 27th Street to Military Road.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 3G01 Boundaries

All streets are in the Northwest quadrant. Beginning at Rock Creek and Western Avenue; Southwest on Western Avenue to Tennyson

Street; East Tennyson Street to 31st Street; Northeast on 31st Street to Aberfoyle Place; West on Aberfoyle Place to Barnaby Street; Northeast on Barnaby Street (extended through the Park) to Beech Street; Southeast on Beech Street and Beech Street extended to Rock Creek; North on Rock Creek to Western Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 3G02 Boundaries

All streets are in the Northwest quadrant. Beginning at Rock Creek at its intersection with a line extending Beech Street to Rock Creek; Northwest on said line and on Beech Street to its intersection with a line extending Barnaby Street to Beech Street; Southwest on said line and on Barnaby Street to Aberfoyle Place; East on Aberfoyle Place to 31st Street; Southwest on 31st Street to Tennyson Street; West on Tennyson Street to Utah Avenue; Southeast on Utah Avenue to 27th Street; South on 27th Street to Military Road; East on Military Road to Rock Creek; North on Rock Creek to Beech Street (extended).

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 3G03 Boundaries

All streets are in the Northwest quadrant. Beginning at Military Road and 27th Street; South on 27th Street to Broad Branch Road; West on Broad Branch Road to Nevada Avenue; Northwest on Nevada Avenue to Nebraska Avenue; Southwest on Nebraska Avenue to Jennifer Street; West on Jennifer Street to Chevy Chase Parkway; North on Chevy Chase Parkway to Legation Street; East on Legation Street to Broad Branch Road; North on Broad Branch Road to Morrison Street; East on Morrison Street to 33rd Street; South on 33rd Street to Livingston Street; East on Livingston Street to Nebraska Avenue; Northeast on Nebraska Avenue to Utah Avenue; Southeast on Utah Avenue to 27th Street; South on 27th Street to Military Road (Note: Chappell Road addresses are included in this SMD).

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 3G04 Boundaries

All streets are in the Northwest quadrant. Beginning at Western Avenue and Tennyson Street; Southwest on Western Avenue to Broad Branch Road; Southeast on Broad Branch Road to Morrison Street; East on Morrison Street to 33rd Street; South on 33rd Street to Livingston Street; East on Livingston Street to Nebraska Avenue; Northeast on Nebraska Avenue to Utah Avenue; Northwest on Utah Avenue to Tennyson Street; West on Tennyson Street to Western Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 3G05 Boundaries

All streets are in the Northwest quadrant. Beginning at Western Avenue and Broad Branch Road; South on Broad Branch Road to Legation Street; West on Legation Street to

Connecticut Avenue; Northwest on Connecticut Avenue to Western Avenue; Northeast on Western Avenue to Broad Branch Road.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(mm) Description of SMD 3G06 Boundaries

All streets are in the Northwest quadrant. Beginning at Connecticut Avenue and Western Avenue; Southwest on Western Avenue to 41st Street; South on 41st Street to Military Road; East on Military Road to Chevy Chase Parkway; North on Chevy Chase Parkway to Legation Street; West on Legation Street to Connecticut Avenue; Northwest on Connecticut Avenue to Western Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 3G07 Boundaries

All streets are in the Northwest quadrant. Beginning at Military Road and Reno Road; South on Reno Road to Nebraska Avenue; Northeast on Nebraska Avenue to Jennifer Street; West on Jennifer Street to Chevy Chase Parkway; North on Chevy Chase Parkway to Military Road; West on Military Road to Reno Road.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of ANC 4A Boundaries

All streets are in the Northwest quadrant. Beginning at the District of Columbia-State of Maryland boundary and Rock Creek; Southeast on Rock Creek to the Beach Drive ramp just north of Klinge Road; Northeast on said ramp and Beach Drive to Piney Branch Parkway; Northeast on Piney Branch Parkway to 16th Street; North on 16th Street to Allison Street; West on Allison Street to Blagden Avenue; Northeast on Blagden Avenue to 18th Street; Northwest on 18th Street to Colorado Avenue; Northeast on Colorado Avenue to Military Road; East on Military Road to Georgia Avenue; North on Georgia Avenue to the District of Columbia-Maryland boundary; Northwest on the District of Columbia-Maryland boundary to the northern tip of the District of Columbia; Southwest on District of Columbia-Maryland boundary to Rock Creek.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(nn) Description of SMD 4A01 Boundaries

All of the following streets are in the Northwest quadrant. Beginning at the District of Columbia-State of Maryland boundary line and Rock Creek; Southeast on Rock Creek to Sherrill Drive; East on Sherrill Drive to the western side of the intersection of Sherrill Drive and 16th Street; Southeast diagonally across the intersection from the centerline of Sherrill Drive to the centerline of 16th Street; South on 16th Street to Whittier Place; East on Whittier Place to 14th Street; North on 14th Street to Aspen Street; West on Aspen Street to the eastern side of the intersection of Aspen Street and 16th Street; Northwest diagonally across

the intersection from the centerline of Aspen Street to the centerline of 16th Street; North on 16th Street to Alaska Avenue; Northeast on Alaska Avenue to Geranium Street; West on Geranium Street to 16th Street; North on 16th Street to Northgate Road; Northeast on Northgate Road to the District of Columbia-Maryland boundary; Northwest on the District of Columbia-Maryland boundary to the northern tip of the District of Columbia; Southwest on the District of Columbia-Maryland boundary to Rock Creek.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(oo) Description of SMD 4A02 Boundaries

All of the following streets are in the Northwest quadrant. Beginning at Eastern Avenue and Northgate Road; Southwest on Northgate Road to 16th Street; South on 16th Street to Geranium Street; East on Geranium Street to Georgia Avenue; North on Georgia Avenue to Eastern Avenue; Northwest on Eastern Avenue to Northgate Road.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 4A03 Boundaries

All of the following streets are in the Northwest quadrant. Beginning at Alaska Avenue and Geranium Street; Southwest on Alaska Avenue to 16th Street; South on 16th Street to Aspen Street; East on Aspen Street to 14th Street; South on 14th Street to Whittier Place; West on Whittier Place to 16th Street; South on 16th Street to Van Buren Street; East on Van Buren Street to Georgia Avenue; North on Georgia Avenue to Geranium Street; West on Geranium Street to Alaska Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(pp)

Description of SMD 4A04 Boundaries

All of the following streets are in the Northwest quadrant. Beginning at 16th Street and Van Buren Street; South on 16th Street to Underwood Street; East on Underwood Street to Luzon Avenue; Southwest on Luzon Avenue to Somerset Place; East on Somerset Place to 14th Street; South on 14th Street to Rittenhouse Street; East on Rittenhouse Street to 13th Street; North on 13th Street to Sheridan Street; East on Sheridan Street to Georgia Avenue; North on Georgia Avenue to Van Buren Street; West on Van Buren Street to 16th Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 4A05 Boundaries

All of the following streets are in the Northwest quadrant. Beginning at 16th Street and Somerset Place; South on 16th Street to Fort Stevens Drive; East on Fort Stevens Drive to 14th Street; South on 14th Street to Peabody Street; East on Peabody Street to 13th Place; North on 13th Place to Fort Stevens Drive; East on Fort Stevens Drive to 13th Street; North on 13th Street to Rittenhouse Street; West on

Rittenhouse Street to 14th Street; North on 14th Street to Somerset Place; West on Somerset Place to 16th Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 4A06 Boundaries

All of the following streets are in the Northwest quadrant. Starting at 14th and Peabody Street; East on Peabody Street to 13th Place; North on 13th Place to Fort Stevens Drive; East on Fort Stevens Drive to 13th Street; North on 13th Street to Sheridan Street; East on Sheridan Street to Georgia Avenue; South on Georgia Avenue to Military Road; West on Military Road to Colorado Avenue; Southwest on Colorado Avenue to Madison Street; West on Madison Street to 14th Street; North on 14th Street to Peabody Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 4A07 Boundaries

All of the following streets are in the Northwest quadrant. Starting at Rock Creek and Joyce Road; East on Joyce Road to Morrow Drive; East on Morrow Drive to Kennedy Street; East on Kennedy Street to Colorado Avenue; Northeast on Colorado Avenue to Madison Street; West on Madison Street to 14th Street; North on 14th Street to Fort Stevens Drive; West on Fort Stevens Drive to 16th Street; North on 16th Street to Luzon Avenue; Northeast on Luzon Avenue to Underwood Street; West on Underwood Street to 16th Street; North on 16th Street to its intersection with a line drawn southeast from the centerline of Sherrill Drive; West on said line and on Sherrill Drive to Rock Creek; South on Rock Creek to Joyce Road.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(qq) Description of SMD 4A08 Boundaries

All of the following streets are in the Northwest quadrant. Starting at Rock Creek and Joyce Road; South on Rock Creek to Klinge Road; East on Klinge Road to Beach Drive; Northeast on Beach Drive to Piney Branch Parkway; East on Piney Branch Parkway to 16th Street; North on 16th Street to Allison Street; West on Allison Street to Blagden Avenue; Northeast on Blagden Avenue to 18th Street; Northwest on 18th Street to Colorado Avenue; Northeast on Colorado Avenue to Kennedy Street; West on Kennedy Street to Morrow Drive; Northwest on Morrow Drive to Joyce Road; Southwest on Joyce Road to Rock Creek.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(rr) Description of ANC 4B Boundaries

All of the following streets are in the Northwest quadrant unless otherwise designated. Beginning at Georgia Avenue and the District of Columbia-State of Maryland boundary line; South on Georgia Avenue to Longfellow Street; East on Longfellow Street to Missouri Avenue; Southeast on Missouri Avenue to Riggs Road,

N.E.; East on Riggs Road, N.E. to South Dakota Avenue; Southeast on South Dakota Avenue to Kennedy Street, N.E.; East on Kennedy Street, N.E. to the District of Columbia-State of Maryland boundary line; North on the State of Maryland-District of Columbia boundary line to Georgia Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2§§ Description of ANC 4B01 Boundaries

All of the following streets are in the Northwest quadrant. Beginning at Georgia Avenue and Eastern Avenue; South on Georgia Avenue to Dahlia Street; East on Dahlia Street to 9th Street; South on 9th Street to Highland Avenue; East on Highland Avenue to Piney Branch Road; North on Piney Branch Road to Blair Road; Southeast on Blair Road to Cedar Street; Northeast on Cedar Street to Carroll Street; East on Carroll Street to Eastern Avenue; North on Eastern Avenue to Georgia Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(tt) Description of ANC 4B02 Boundaries

All of the following streets are in the Northwest quadrant. Beginning at Georgia Avenue and Dahlia Street; South on Georgia Avenue to Van Buren Street; East on Van Buren Street to Blair Road; North on Blair Road to Piney Branch Road; Southwest on Piney Branch to Highland Avenue; West on Highland Avenue to 9th Street; North on 9th Street to Dahlia Street; West on Dahlia Street to Georgia Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of ANC 4B03 Boundaries

All of the following streets are in the Northwest quadrant. Beginning at Georgia Avenue and Van Buren Street; South on Georgia Avenue to Rittenhouse Street; East on Rittenhouse Street to 8th Street; North on 8th Street to Roxboro Place; East on Roxboro Place to 7th Street; South on 7th Street to Rittenhouse Street; East on Rittenhouse Street to 3rd Street; North on 3rd Street to Van Buren Street; West on Van Buren Street to Georgia Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of ANC 4B04 Boundaries

All of the following streets are in the Northwest quadrant. Beginning at Georgia Avenue and Rittenhouse Street; South on Georgia Avenue to Missouri Avenue; Southeast on Missouri Avenue to Nicholson Street; East on Nicholson Street to 5th Street; North on 5th Street to Oglethorpe Street; East on Oglethorpe Street to 4th Street; North on 4th Street to Rittenhouse Street; West on Rittenhouse Street to 7th Street; North on 7th Street to Roxboro Place; West on Roxboro Place to 8th Street; South on 8th Street to Rittenhouse Street; West on Rittenhouse Street to Georgia Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of ANC 4B05 Boundaries

All of the following streets are in the Northwest quadrant. Beginning at Georgia Avenue and Missouri Avenue; South on Georgia Avenue to Longfellow Street; East on Longfellow Street to 4th Street; North on 4th Street to Oglethorpe Street; West on Oglethorpe Street to 5th Street; South on 5th Street to Nicholson Street; West on Nicholson Street to Missouri Avenue; West on Missouri Avenue to Georgia Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of ANC 4B06 Boundaries

All of the following streets are in the Northwest quadrant. Beginning at 3rd Street and Van Buren Street; South on 3rd Street to Rittenhouse Street; West on Rittenhouse Street to 4th Street; South on 4th Street to Missouri Avenue; East on Missouri Avenue to 2nd Street; North on 2nd Street to Longfellow Street; East on Longfellow Street to 1st Street; North on 1st Street to Milmarson Place; East on Milmarson Place to North Capital Street; North on North Capital Street to McDonald Place, N.E.; East on McDonald Place, N.E. to New Hampshire Avenue, N.E.; Northeast on New Hampshire Avenue to the CSX Railroad tracks; North on the CSX Railroad tracks to Van Buren Street; West on Van Buren Street to 3rd Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of ANC 4B07 Boundaries

All of the following streets are in the Northwest quadrant. Beginning at Blair Road and Cedar Street; South on Blair Road to Van Buren Street; East on Van Buren to the CSX Railroad tracks; South on the CSX Railroad tracks to New Hampshire Avenue; Northeast on New Hampshire Avenue to Eastern Avenue; North on Eastern Avenue to Carroll Street; West on Carroll Street to Cedar Street; Southwest on Cedar Street to Blair Road.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(uu) Description of ANC 4B08 Boundaries

All of the following streets are in the Northwest quadrant unless otherwise designated. Beginning at New Hampshire Avenue, N.E. and Eastern Avenue; South on New Hampshire Avenue, N.E. to McDonald Place, N.E.; West on McDonald Place, N.E. to North Capital Street; South on North Capital Street to Milmarson Place, N.W.; West on Milmarson Place, N.W. to 1st Street, N.W.; South on 1st Street, N.W. to Longfellow Street; West on Longfellow Street to 2nd Street; South on 2nd Street to Missouri Avenue; East on Missouri Avenue to Riggs Road; East on Riggs Road, N.E. to 3rd Street, N.E.; North on 3rd Street, N.E. to Oglethorpe Street, N.E.; East on Oglethorpe Street, N.E. to 6th Street, N.E.; North on 6th Street, N.E. to Eastern Avenue; North on Eastern Avenue to New Hampshire Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of ANC 4B09 Boundaries

All of the following streets are in the Northwest quadrant unless otherwise designated. Beginning at 6th Street, N.E. and Eastern Avenue; South on 6th Street, N.E. to Oglethorpe Street, N.E.; West on Oglethorpe Street, N.E. to 3rd Street, N.E.; South on 3rd Street, N.E. to Riggs Road, N.E.; Across Riggs Road, N.E. to South Dakota Avenue, N.E.; South on South Dakota Avenue, N.E. to Kennedy Street, N.E.; East on Kennedy Street, N.E. to Eastern Avenue; North on Eastern Avenue to 6th Street, N.E.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(vv) Description of ANC 4C Boundaries

All of the following streets are in the Northwest quadrant unless otherwise designated. Beginning at Spring Road and 16th Street; North on 16th Street to Allison Street; West on Allison Street to Blagden Avenue; Northeast on Blagden Avenue to 18th Street; Northwest on 18th Street to Colorado Avenue; Northeast on Colorado Avenue to Military Road; East on Military Road to Georgia Avenue; South on Georgia Avenue to Buchanan Street; East on Buchanan Street to Illinois Avenue; Northwest on Illinois Avenue to Sherman Circle; Counterclockwise on Sherman Circle to Kansas Avenue; Northeast on Kansas Avenue to Decatur Street; East on Decatur Street to 5th Street; North on 5th Street to Delafield Place; East on Delafield Place to 4th Street; South on 4th Street to Decatur Street; East on Decatur Street to New Hampshire Avenue; Southwest on New Hampshire Avenue to the Rock Creek Cemetery boundary line; Southeast on the Rock Creek Cemetery boundary line to Webster Street; East on Webster Street to Rock Creek Church Road; Southwest on Rock Creek Church Road to New Hampshire Avenue; Southwest on New Hampshire Avenue to Spring Road; Northwest on Spring Road to 16th Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 4C01 Boundaries

All of the following streets are in the Northwest quadrant. Beginning at Military Road and Colorado Avenue; Southwest on Colorado Avenue to 14th Street; South on 14th Street to Hamilton Street; East on Hamilton Street to 13th Street; North on 13th Street to Ingraham Street; East on Ingraham Street to Georgia Avenue; North on Georgia Avenue to Military Road; West on Military Road to Colorado Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 4C02 Boundaries

All of the following streets are in the Northwest quadrant. Beginning at Colorado Avenue and 14th Street; Southwest on Colorado Avenue to 17th Street; Southeast on 17th Street to Decatur Street; East on Decatur Street to 16th

Street; South on 16th Street to Crittenden Street; East on Crittenden Street to 14th Street; South on 14th Street to Buchanan Street; East on Buchanan Street to 13th Street; North on 13th Street to Decatur Street; East on Decatur Street to Georgia Avenue; North on Georgia Avenue to Ingraham Street; West on Ingraham Street to 13th Street; South on 13th Street to Hamilton Street; West on Hamilton Street to 14th Street; North on 14th Street to Colorado Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 4C03 Boundaries

All of the following streets are in the Northwest quadrant. Beginning at Colorado Avenue and 17th Street; Southwest on Colorado Avenue to 18th Street; Southeast on 18th Street to Blagden Avenue; Southwest on Blagden Avenue to Allison Street; East on Allison Street to 16th Street; South on 16th Street to Varnum Street; East on Varnum Street to 15th Street; North on 15th Street to Webster Street; East on Webster Street to Arkansas Avenue; Northeast on Arkansas Avenue to Allison Street; East on Allison Street to Georgia Avenue; North on Georgia Avenue to Decatur Street; West on Decatur Street to 13th Street; South on 13th Street to Buchanan Street; West on Buchanan Street to 14th Street; North on 14th Street to Crittenden Street; West on Crittenden Street to 16th Street; North on 16th Street to Decatur Street; West on Decatur Street to 17th Street; Northwest on 17th Street to Colorado Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(ww) Description of SMD 4C04 Boundaries

All of the following streets are in the Northwest quadrant. Beginning at 16th Street and Upshur Street; South on 16th Street to Spring Road; East on Spring Road to 14th Street; North on 14th Street to Upshur Street; West on Upshur Street to 16th Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 4C05 Boundaries

All of the following streets are in the Northwest quadrant. Beginning at Arkansas Avenue and Allison Street; Southwest on Arkansas Avenue to Webster Street; West on Webster Street to 15th Street; South on 15th Street to Varnum Street; West on Varnum Street to 16th Street; South on 16th Street to Upshur Street; East on Upshur Street to 14th Street; South on 14th Street to Spring Road; East on Spring Road to 13th Street; North on 13th Street to Taylor Street; East on Taylor Street to Kansas Avenue; Northeast on Kansas Avenue to Georgia Avenue; North on Georgia Avenue to Iowa Avenue; Northwest on Iowa Avenue to Allison Street; West on Allison Street to Arkansas Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(xx) Description of SMD 4C06 Boundaries

All the following streets are in the Northwest quadrant. Beginning at 13th Street and Taylor Street; South on 13th Street to Spring Road; East on Spring Road to New Hampshire Avenue; Northeast on New Hampshire Avenue to Georgia Avenue; North on Georgia Avenue to Shepherd Street; West on Shepherd Street to Kansas Avenue; Northeast on Kansas Avenue to Taylor Street; West on Taylor Street to 13th Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 4C07 Boundaries

All of the following streets are in the Northwest quadrant. Beginning at Georgia Avenue and Buchanan Street; South on Georgia Avenue to Allison Street; West on Allison Street to Iowa Avenue; Southeast on Iowa Avenue to Varnum Street; East on Varnum Street to Georgia Avenue; South on Georgia Avenue to Upshur Street; West on Upshur Street to Kansas Avenue; Southwest on Kansas Avenue to Shepherd Street; East on Shepherd Street to 8th Street; North on 8th Street to Upshur Street; East on Upshur Street to 5th Street; North on 5th Street to Grant Circle; Counter-clockwise around Grant Circle to New Hampshire Avenue; Northeast on New Hampshire Avenue to Allison Street; West on Allison Street to Illinois Avenue; North on Illinois Avenue to Buchanan Street; West on Buchanan Street to Georgia Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(yy) Description of SMD 4C08 Boundaries

All of the following streets are in the Northwest quadrant. Beginning at 8th Street and Upshur Street; South on 8th Street to Shepherd Street; West on Shepherd Street to Georgia Avenue; South on Georgia Avenue to Rock Creek Church Road; East on Rock Creek Church Road to 5th Street; North on 5th Street to Upshur Street; West on Upshur Street to 8th Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 4C09 Boundaries

All of the following streets are in the Northwest quadrant. Beginning at 5th Street and Delafield Place; South on 5th Street to Decatur Street; West on Decatur Street to Kansas Avenue; Southwest on Kansas Avenue to Sherman Circle; Clockwise around Sherman Circle to Illinois Avenue; South on Illinois Avenue to Allison Street; East on Allison Street to New Hampshire Avenue; Southwest on New Hampshire Avenue to Grant Circle; Clockwise around Grant Circle to Illinois Avenue; Southeast on Illinois Avenue to Upshur Street; East on Upshur Street to 4th Street; North on 4th Street to Webster Street; East on Webster Street to the boundary of Rock Creek Cemetery; Northwest on the Rock Creek Cemetery boundary to New Hampshire Avenue; Northeast on New Hampshire Avenue to Decatur

Street; West on Decatur Street to 4th Street; North on 4th Street to Delafield Place; West on Delafield Place to 5th Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 4C10 Boundaries

All of the following streets are in the Northwest quadrant. Beginning at 4th Street and Webster Street; South on 4th Street to Upshur Street; West on Upshur Street to Illinois Avenue; North on Illinois Avenue to Grant Circle; Clockwise around Grant Circle to 5th Street; South on 5th Street to Rock Creek Church Road; East on Rock Creek Church Road to Webster Street; West on Webster Street to 4th Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of ANC 4D Boundaries

All of the following streets are in the Northwest quadrant. Beginning at Georgia Avenue and Longfellow Street; South on Georgia Avenue to Buchanan Street; East on Buchanan Street to Illinois Avenue; Northwest on Illinois Avenue to Sherman Circle; Counter-clockwise around Sherman Circle to Kansas Avenue; Northeast on Kansas Avenue to Decatur Street; East on Decatur Street to 5th Street; North on 5th Street to Delafield Place; East on Delafield Place to 4th Street; South on 4th Street to Decatur Street; East on Decatur Street to New Hampshire Avenue; Southwest on New Hampshire Avenue to Rock Creek Cemetery boundary line; Southeast on the Rock Creek Cemetery boundary line to Webster Street; East on Webster Street to Rock Creek Church Road; Northeast on Rock Creek Church Road to North Capitol Street; North on North Capitol Street to Missouri Avenue; Northwest on Missouri Avenue to Longfellow Street; West on Longfellow Street to Georgia Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 4D01 Boundaries

All of the following streets are in the Northwest quadrant. Beginning at Georgia Avenue and Longfellow Street; South on Georgia Avenue to Ingraham Street; East on Ingraham Street to 9th Street; North on 9th Street to Jefferson Street; East on Jefferson Street to 5th Street; North on 5th Street to Longfellow Street; West on Longfellow Street to Georgia Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 4D02 Boundaries

All of the following streets are in the Northwest quadrant. Beginning at 5th Street and Longfellow Street; South on 5th Street to Jefferson Street; East on Jefferson Street to 4th Street; South on 4th Street to Gallatin Street; East on Gallatin Street to New Hampshire Avenue; Northeast on New Hampshire Avenue to Ingraham Street; East on Ingraham Street to North Capitol Street; North on North Capitol Street to Missouri Avenue; Northwest on Mis-

souri Avenue to Longfellow Street; West on Longfellow Street to 5th Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 4D03 Boundaries

All of the following streets are in the Northwest quadrant. Beginning at 7th Street and Ingraham Street; South on 7th Street to Emerson Street; East on Emerson Street to 5th Street; South on 5th Street to Delafield Place; East on Delafield Place to 4th Street; North on 4th Street to Emerson Street; East on Emerson Street to 3rd Street; North on 3rd Street to Gallatin Street; West on Gallatin Street to 4th Street; North on 4th Street to Jefferson Street; West on Jefferson Street to 5th Street; South on 5th Street to Ingraham Street; West on Ingraham Street to 7th Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 4D04 Boundaries

All of the following streets are in the Northwest quadrant. Beginning at Georgia Avenue and Ingraham Street; South on Georgia Avenue to Farragut Street; East on Farragut Street to 9th Street; South on 9th Street to Emerson Street; East on Emerson Street to 7th Street; North on 7th Street to Ingraham Street; East on Ingraham Street to 5th Street; North on 5th Street to Jefferson Street; West on Jefferson Street to 9th Street; South on 9th Street to Ingraham Street; West on Ingraham Street to Georgia Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 4D05 Boundaries

All of the following streets are in the Northwest quadrant. Beginning at 4th Street and Emerson Street; South on 4th Street to Decatur Street; East on Decatur Street to New Hampshire Avenue; Southwest on New Hampshire Avenue to Rock Creek Cemetery boundary line; Southeast on the Rock Creek Cemetery boundary line to Webster Street; East on Webster to Rock Creek Church Road; Northeast on Rock Creek Church Road to North Capitol Street; North to North Capitol Street to Ingraham Street; West on Ingraham Street to New Hampshire Avenue; Southwest on New Hampshire Avenue to Gallatin Street; West on Gallatin Street to 3rd Street; South on 3rd Street to Emerson Street; West on Emerson Street to 4th Street.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(zz) Description of SMD 4D06 Boundaries

All of the following streets are in the Northwest quadrant. Beginning at Georgia Avenue and Farragut Street; South on Georgia Avenue to Buchanan Street; East on Buchanan Street to Illinois Avenue; North on Illinois Avenue to Sherman Circle; Around Sherman Circle in a counter-clockwise direction to Kansas Avenue; North on Kansas Avenue to Decatur Street; East on Decatur Street to 5th Street; North on 5th Street to Emerson Street; West on Emerson

Street to 9th Street; North on 9th Street to Farragut; West on Farragut to Georgia Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of ANC 5A Boundaries

All of the following streets are in the Northwest quadrant unless otherwise designated. Beginning at the Intersection of North Capitol Street and Riggs Road; East on Riggs Road to South Dakota Avenue; Southeast on South Dakota Avenue to Kennedy Street; East on Kennedy Street to the District of Columbia-Maryland boundary; South on the District of Columbia-Maryland boundary to the Anacostia River; Southwest on the Anacostia River to the CSX Railroad tracks; West on the railroad tracks to New York Avenue; North on New York Avenue to South Dakota Avenue; Northwest on South Dakota Avenue to Rhode Island Avenue; Southwest on Rhode Island Avenue to 18th Street; North on 18th Street to Irving Street; West on Irving Street to the CSX Railroad tracks; North on the CSX Railroad tracks to Taylor Street; West on Taylor Street across the CSX railroad tracks to Hawaii Avenue; Northwest on Hawaii Avenue to Fort Totten Drive; Northwest on Fort Totten Drive to Allison Street; West on Allison Street to North Capitol Street; North on North Capitol Street to Riggs Road, N.E.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(aaa) Description of SMD 5A01 Boundaries

All streets are in the Northeast quadrant unless otherwise designated. Beginning at North Capitol Street and Riggs Road; East on Riggs Road to South Dakota Avenue; Southeast on South Dakota Avenue to Kennedy Street; West on Kennedy Street to 4th Street; Southeast on 4th Street to Hamilton Street; East on Hamilton Street to South Dakota Avenue; Southeast on South Dakota Avenue to Gallatin Street; West on Gallatin Street extended to the CSX Railroad tracks; South on the CSX Railroad tracks to Taylor Street; West on Taylor Street across the railroad tracks to Hawaii Avenue; Northwest on Hawaii Avenue into Fort Totten Drive; Northwest on Fort Totten Drive to Allison Street; West on Allison Street to North Capitol Street; North on North Capitol Street to Riggs Road.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(bbb) Description of SMD 5A02 Boundaries

All streets are in the Northeast quadrant unless otherwise designated. Beginning at 4th Street and Kennedy Street; East on Kennedy Street to Eastern Avenue; Southeast on Eastern Avenue to Galloway Street; West on Galloway Street to 11th Street; North on 11th Street to Hamilton Street; West on Hamilton Street to 4th Street; North on 4th Street to Kennedy Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 5A03 Boundaries

All streets are in the Northeast quadrant unless otherwise designated. Beginning at Hamilton Street and South Dakota Avenue; East on Hamilton Street to 11th Street; South on 11th Street to Galloway Street; East on Galloway Street to Sargent Road; South on Sargent Road to Gallatin Street; West on Gallatin Street to 12th Street; South on 12th Street to South Dakota Avenue; Northwest on South Dakota Avenue to Delafield Street; Southwest on Delafield Street to Decatur Place; West on Decatur Place to 7th Place; South on 7th Place to Decatur Place; West on Decatur Place to 7th Street; South on 7th Street to Buchanan Street; West on Buchanan Street to the CSX Railroad tracks; North on the CSX Railroad tracks to Gallatin Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 5A04 Boundaries

All streets are in the Northeast quadrant unless otherwise designated. Beginning at 12th Street and Gallatin Street; East on Gallatin Street to 14th Street; South on 14th Street to Emerson Street; West on Emerson Street to 13th Street; South on 13th Street to Delafield Place; West on Delafield Place to Sargent Road; South on Sargent Road to South Dakota Avenue; Southeast on South Dakota Avenue to Allison Street; West on Allison Street to 12th Street; North on 12th to Buchanan Street; West on Buchanan Street to 7th Street; North on 7th Street to Decatur Place; East on Decatur Place to 7th Place; North on 7th Place to Delafield Street; East on Delafield Street to South Dakota Avenue; Southeast on South Dakota Avenue to 12th Street; North on 12th Street to Gallatin Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 5A05 Boundaries

All streets are in the Northeast quadrant unless otherwise designated. Beginning at the CSX Railroad tracks and a line extending Buchanan Street west; East on said line and on Buchanan Street to 12th Street; South on 12th Street to Allison Street; East on Allison Street to South Dakota Avenue; Southeast on South Dakota Avenue to 14th Street; South on 14th Street to Taylor Street; West on Taylor Street to the CSX Railroad tracks; North on the railroad tracks to a line extending Buchanan Street west.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(ccc) Description of SMD 5A06 Boundaries

All streets are in the Northeast quadrant unless otherwise designated. Beginning at the CSX Railroad tracks and Taylor Street; East on Taylor Street to 13th Street; South on 13th Street to Shepherd Street; East on Shepherd Street to 14th Street; South on 14th Street to Otis Street; West on Otis Street to Bunker Hill

Road; West on Bunker Hill Road to Michigan Avenue; West on Michigan Avenue to the CSX Railroad tracks; North on the CSX Railroad tracks to Taylor Street.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(ddd) Description of SMD 5A07 Boundaries

All streets are in the Northeast quadrant unless otherwise designated. Beginning at the CSX Railroad tracks and Michigan Avenue; East on Michigan Avenue to Bunker Hill Road; East on Bunker Hill Road to Otis Street; East on Otis Street to 14th Street; South on 14th Street to Newton Street; East on Newton Street to 16th Street; South on 16th Street to Lawrence Street; West on Lawrence Street to 15th Street; South on 15th Street to Irving Street; West on Irving Street to the CSX Railroad tracks; North on the CSX Railroad tracks to Michigan Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(eee) Description of SMD 5A08 Boundaries

All streets are in the Northeast quadrant unless otherwise designated. Beginning at Sargent Road and Gallatin Street; East on Gallatin Street to 14th Street; South on 14th Street to Emerson Street; West on Emerson Street to 13th Street; South on 13th Street to Delafield Place; West on Delafield Place to Sargent Road; South on Sargent Road to South Dakota Avenue; Southeast on South Dakota Avenue to 14th Street; South on 14th Street to Taylor Street; West on Taylor Street to 13th Street; South on 13th Street to Shepard Street; East on Shepherd Street to 14th Street; South on 14th Street to Newton Street; East on Newton Street to 18th Street; North on 18th Street to Michigan Avenue; Northeast on Michigan Avenue to Eastern Avenue; Northwest on Eastern Avenue to Galloway Street; West on Galloway Street to Sargent Road; Southwest on Sargent Road to Gallatin Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 5A09 Boundaries

All streets are in the Northeast quadrant unless otherwise designated. Beginning at Michigan Avenue and 18th Street; Northeast on Michigan Avenue to Eastern Avenue; Southeast on Eastern Avenue to Rhode Island Avenue; Southwest on Rhode Island Avenue to Otis Street; West on Otis Street to 18th Street; North on 18th Street to Michigan Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(fff) Description of SMD 5A10 Boundaries

All streets are in the Northeast quadrant unless otherwise designated. Beginning at 18th and Otis Street; East on Otis Street to South Dakota Avenue; Southeast on South Dakota Avenue to 24th Street; North on 24th Street to Lawrence Street; East on Lawrence Street to Hoover Road; Southwest on Hoover Road to

Rhode Island Avenue; Southwest on Rhode Island Avenue to 18th Street; North on 18th Street to Irving Street; West on Irving Street to 15th Street; North on 15th Street to Lawrence Street; East on Lawrence Street to 16th Street; North on 16th Street to Newton Street; East on Newton Street to 18th Street; North on 18th Street to Otis Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 5A11 Boundaries

All streets are in the Northeast quadrant unless otherwise designated. Beginning at South Dakota Avenue and Otis Street; East on Otis Street to Rhode Island Avenue; Northeast on Rhode Island Avenue to Eastern Avenue; Southeast on Eastern Avenue to Bladensburg Road; Southwest on Bladensburg Road to South Dakota Avenue; Northwest on South Dakota Avenue to Rhode Island Avenue; Northeast on Rhode Island Avenue to Hoover Road; Northeast on Hoover Road to Lawrence Street; West on Lawrence Street to 24th Street; South on 24th Street to South Dakota Avenue; Northwest on South Dakota Avenue to Otis Street.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(ggg) Description of SMD 5A12 Boundaries

All streets are in the Northeast quadrant unless otherwise designated. Beginning at Bladensburg Road and Eastern Avenue; Southeast on Eastern Avenue to the Anacostia River; Southwest on the Anacostia River to the CSX Railroad tracks; West on the CSX Railroad tracks to New York Avenue; North on New York Avenue to South Dakota Avenue; Northwest on South Dakota Avenue to Bladensburg Road; Northeast on Bladensburg Road to Eastern Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(hhh) Description of ANC 5B Boundaries

All streets are in the Northeast quadrant unless otherwise designated. Beginning at the CSX Railroad tracks and Irving Street; South on the CSX Railroad tracks to Florida Avenue; East on Florida Avenue to Benning Road; East on Benning Road to the Anacostia River; North on the Anacostia River to the AMTRACK Railroad tracks; West on the AMTRACK Railroad tracks to New York Avenue; Northeast on New York Avenue to South Dakota Avenue; North on South Dakota Avenue to Rhode Island Avenue; South on Rhode Island Avenue to 18th Street; North on 18th Street to Irving Street; West on Irving Street to the CSX Railroad tracks.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 5B01 Boundaries

All streets are in the Northeast quadrant unless otherwise designated. Beginning at Rhode Island Avenue and Saratoga Avenue; Northeast on Rhode Island Avenue to Franklin Street; East on Franklin Street to 18th Street; South on 18th Street to Montana Avenue;

Northwest on Montana Avenue to Downing Street; Southwest on Downing Street to 14th Street; Northwest on 14th Street to Saratoga Avenue; Southwest on Saratoga Avenue to Rhode Island Avenue; Northeast on Rhode Island Avenue to Saratoga Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(iii) Description of SMD 5B02 Boundaries

All streets are in the Northeast quadrant unless otherwise designated. Beginning at the corner of South Dakota Avenue and Rhode Island Avenue; Southwest on Rhode Island Avenue to 24th Street; South on 24th Street to Hamlin Place; West on Hamlin Place to Mills Avenue; Northwest on Mills Avenue to Hamlin Street; West on Hamlin Street to 20th Street; South on 20th Street to Franklin Street; West on Franklin Street to 18th Street; South on 18th Street to Montana Avenue; South on Montana Avenue to the CSX Railroad Tracks; Northeast on the CSX Railroad tracks to Evarts Street; East on Evarts Street to 28th Street; North on 28th Street to Franklin Street; East on Franklin Street to 30th Street; North on 30th Street to South Dakota Avenue; Northwest on South Dakota Avenue to Rhode Island Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(jjj) Description of SMD 5B03 Boundaries

All streets are in the Northeast quadrant unless otherwise designated. Beginning at the AMTRAK Railroad tracks and Rhode Island Avenue; Northeast on Rhode Island Avenue to Saratoga Avenue; East on Saratoga Avenue to 14th Street; Southeast on 14th Street to Downing Street; Northeast on Downing to Montana Avenue; Southeast on Montana Avenue to the CSX Railroad tracks; West and North on the railroad tracks which form the boundary of census block 2023 to T Street; West on T Street to the CSX Railroad tracks; Northeast on the railroad tracks to Rhode Island Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(kkk) Description of SMD 5B04 Boundaries

All streets are in the Northeast quadrant unless otherwise designated. Beginning at the CSX Railroad tracks and Irving Street; East on Irving Street to 18th Street; South on 18th Street to Rhode Island Avenue; Northeast on Rhode Island to 24th Street; South on 24th Street to Hamlin Place; West on Hamlin Place to Mills Avenue; Northwest on Mills Avenue to Hamlin Street; West on Hamlin Street to 20th Street; South on 20th Street to Franklin Street; West on Franklin Street to Rhode Island Avenue; Southwest on Rhode Island Avenue to the railroad tracks; North on the CSX Railroad tracks to Irving Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 5B05 Boundaries

All streets are in the Northeast quadrant. Beginning at New York Avenue and 9th Street; East on New York Avenue to Kendall Street; Southeast on Kendall Street to Gallaudet Street; Southwest on Gallaudet Street to Corcoran Street; South on Corcoran Street to Mount Olivet Road; East on Mount Olivet Road to Trinidad Avenue; South on Trinidad Avenue to Queen Street; West on Queen Street to West Virginia Avenue; North on West Virginia Avenue to Corcoran Street; Northwest on Corcoran Street to Mount Olivet Road; Northwest on Mount Olivet Road to 9th Street; North on 9th Street to New York Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(III) Description of SMD 5B06 Boundaries

All streets are in the Northeast quadrant unless otherwise designated. Beginning at the CSX Railroad tracks and Brentwood Parkway; South on Brentwood Parkway to Mount Olivet Road; Southwest on Mount Olivet Road to Corcoran Street; South on Corcoran Street to West Virginia Avenue; South on West Virginia Avenue to Queen Street; East on Queen Street to Montello Avenue; South on Montello Avenue to Florida Avenue; West on Florida Avenue to the CSX Railroad tracks; North on the CSX railroad tracks to T Street; East on T Street to the CSX rail spur which forms the boundary between census blocks 2023 and 2030; South on said spur to its junction with the Amtrack Railroad tracks at Brentwood Parkway.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 5B07 Boundaries

All streets are in the Northeast quadrant. Beginning at Montello Avenue and Queen Street; East on Queen Street to Trinidad Avenue; North on Trinidad Avenue to Mount Olivet Road; East on Mount Olivet Road to Bladensburg Road; South on Bladensburg Road to M Street; East on M Street to 17th Street; South on 17th Street to Lyman Place; West on Lyman Place to Bladensburg Road; North on Bladensburg Road to Meigs Place; West on Meigs Place to 16th Street; South on 16th Street to Queen Street; West on Queen Street to Holbrook Street; South on Holbrook Street to Oates Street; West on Oates Street to Montello Avenue; North on Montello Avenue to Queen Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 5B08 Boundaries

All streets are in the Northeast quadrant unless otherwise designated. Beginning at Florida Avenue and Montello Avenue; Southeast on Florida Avenue to H Street; East on H Street to Bladensburg Road; North on Bladensburg Road to Levis Street; West on Levis Street to Holbrook Street; South on Holbrook Street to Oates Street; West on Oates Street to Montello Avenue; South on Montello Avenue to Florida Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 5B09 Boundaries

All streets are in the Northeast quadrant unless otherwise designated. Beginning at the AMTRACK Railroad tracks and 9th Street; Northeast on the railroad spur which forms the boundary of census block 2023 to the CSX railroad tracks; East on the CSX Railroad tracks to Evarts Street; East on Evarts Street to 28th Street; North on 28th Street to Franklin Street; East on Franklin Street to 30th Street; North on 30th Street to South Dakota Avenue; Southeast on South Dakota Avenue to New York Avenue; Southwest on New York Avenue to the AMTRACK Railroad tracks; East on those railroad tracks to the Anacostia River; Southwest on the Anacostia River to a line extending M Street east to the Anacostia River; West on the M Street extension to M Street; West on M Street to Mount Olivet Road (closed); Northwest on Mount Olivet Road to Corcoran Street; Northwest on Corcoran Street to Gallaudet Street; East on Gallaudet Street to Kendall Street; Northwest on Kendall Street to New York Avenue; Southwest on New York Avenue to 9th Street; Northwest on 9th Street to the AMTRACK railroad tracks.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(mmm) Description of SMD 5B10 Boundaries

All streets are in the Northeast quadrant unless otherwise designated. Beginning at Bladensburg Road and Mount Olivet Road (closed); East on Mount Olivet Road (closed) to 19th Street; South on 19th Street to M Street; East on M Street to Summit Street; Southwest on Summit Street to 19th Street; South on 19th Street to Maryland Avenue; Southwest on Maryland Avenue to 17th Street; South on 17th Street to H Street; East on H Street to 18th Street; South on 18th Street to Benning Road; West on Benning Road to Bladensburg Road; North on Bladensburg Road to Levis Street; West on Levis Street to Holbrook Street; North on Holbrook Street to Queen Street; East on Queen Street to 16th Street; North on 16th Street to Meigs Place; East on Meigs Place to Bladensburg Road; South on Bladensburg Road to Lyman Place; East on Lyman Place to 17th Street; North on 17th Street to M Street; West on M Street to Bladensburg Road; Northeast on Bladensburg Road to Mount Olivet Road (closed).

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(nnn) Description of SMD 5B11 Boundaries

All streets are in the Northeast quadrant unless otherwise designated. Beginning at Mount Olivet Road (closed) and 19th Street; East on Mount Olivet Road (closed) to M Street; East on M Street to 21st Street; South on 21st Street to H Street; West on H Street to 19th Street; South on 19th Street to Bennett Place;

East on Bennett Place to 21st Street; South on 21st Street to Benning Road; West on Benning Road to 18th Street; North on 18th Street to H Street; West on H Street to 17th Street; North on 17th Street to Maryland Avenue; Northeast on Maryland Avenue to 19th Street; North on 19th Street to Summit Street; Northwest on Summit Street to M Street; West on M Street to 19th Street; North on 19th Street to Mount Olivet Road (closed).

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(ooo) Description of SMD 5B12 Boundaries

All streets are in the Northeast quadrant unless otherwise designated. Beginning at 21st Street and M Street; East on M Street, and on a line extending M Street east, to the Anacostia River; Southwest on the Anacostia River to Benning Road; West on Benning Road to 21st Street; North on 21st Street to Bennett Place; West on Bennett Place to 19th Street; North on 19th Street to H Street; East on H Street to 21st Street; North on 21st Street to M Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of ANC 5C Boundaries

All streets are in the Northeast quadrant unless otherwise designated. Beginning at Allison Street and Fort Totten Drive; Southeast on Fort Totten Drive to Hawaii Avenue; South on Hawaii Avenue to Taylor Street; East on Taylor Street to the CSX Railroad tracks; South on the CSX Railroad tracks to Florida Avenue; West on Florida Avenue to New York Avenue; Southwest on New York Avenue, continuing on New York Avenue, N.W. to Kirby Street, N.W.; North on Kirby Street, N.W. to N Street, N.W.; West on N Street, N.W. to New Jersey Avenue, N.W.; Northwest on New Jersey Avenue, N.W. to Florida Avenue, N.W.; Southeast on Florida Avenue, N.W. to Rhode Island Avenue, N.W.; Northeast on Rhode Island Avenue to 2nd Street, N.W.; North on 2nd Street, N.W. to Bryant Street, N.W.; East on Bryant Street, N.W. to First Street, N.W.; North on First Street, N.W. to Michigan Avenue N.W.; West on Michigan Avenue N.W. to Park Place, N.W.; North on Park Place, N.W. to Rock Creek Church Road, N.W.; Northeast on Rock Creek Church Road, N.W. to Allison Street, N.W.; Northeast on Allison Street, N.W. to Fort Totten Drive.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 5C01 Boundaries

All streets are in the Northwest quadrant unless otherwise designated. Beginning at New Jersey Avenue and Florida Avenue; Southeast on Florida Avenue to North Capitol Street; South on North Capitol Street to P Street; West on P Street to 3rd Street; South on 3rd Street to O Street; West on O Street to New Jersey Avenue; North on New Jersey Avenue to Florida Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 5C02 Boundaries

All streets are in the Northwest quadrant unless otherwise designated. Beginning at New Jersey Avenue and O Street; East on O Street to 3rd Street; North on 3rd Street to P Street; East on P Street to North Capitol Street; North on North Capitol Street to Randolph Place, N.E.; East on Randolph Place, N.E. to Lincoln Road, N.E.; Northeast on Lincoln Road, N.E. to S Street, N.E.; West on S Street, N.E. to North Capitol Street, N.E.; North on North Capitol Street, N.E. to T Street, N.E.; East on T Street, N.E. to 2nd Street, N.E.; South on 2nd Street, N.E. to R Street, N.E.; West on R Street, N.E. to Eckington Place, N.E.; Southeast on Eckington Place, N.E. to Florida Avenue, N.E.; Southeast on Florida Avenue, N.E. to New York Avenue, N.E.; Southeast on New York Avenue, N.E., continuing on New York Avenue, N.W. to Kirby Street; North on Kirby Street to N Street; West on N Street to New Jersey Avenue; North on New Jersey Avenue to O Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 5C03 Boundaries

All streets are in the Northwest quadrant unless otherwise designated. Beginning at Florida Avenue and Rhode Island Avenue; Northeast on Rhode Island Avenue to North Capitol Street; South on North Capitol Street to S Street; East on S Street, N.E. to Lincoln Road, N.E.; Southeast on Lincoln Road, N.E. to Randolph Place, N.E.; West on Randolph Place, N.E. to North Capitol Street; South on North Capitol Street to Florida Avenue; Northwest on Florida Avenue to Rhode Island Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 5C04 Boundaries

All streets are in the Northwest quadrant unless otherwise designated. Beginning at 2nd Street and Adams Street; East on Adams Street to North Capitol Street; South on North Capitol Street to Rhode Island Avenue; Southeast on Rhode Island Avenue to 2nd Street; North on 2nd Street to Adams Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 5C05 Boundaries

All streets are in the Northeast quadrant unless otherwise designated. Beginning at 2nd Street and Rhode Island Avenue; Northeast on Rhode Island Avenue to the CSX Railroad tracks; Southeast on the CSX Railroad tracks to Florida Avenue; Northwest on Florida Avenue to Eckington Place; Northeast on Eckington Place to R Street; East on R Street to 2nd Street; North on 2nd Street to T Street; West on T Street to Summit Place; North on Summit Place to Todd Place; East on Todd Place to 2nd Street; North on 2nd Street to Rhode Island Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 5C06 Boundaries

All streets are in the Northeast quadrant unless otherwise designated. Beginning at Lincoln Road and Bryant Street; East on Bryant Street to 4th Street; South on 4th Street to Rhode Island Avenue; Southwest on Rhode Island Avenue to 2nd Street; South on 2nd Street to Todd Place; West on Todd Place to Summit Place; South on Summit Place to T Street; East on T Street to North Capitol Street; North on North Capitol Street to Rhode Island Avenue; Northeast on Rhode Island Avenue to Summit Place and V Street; West on V Street to Lincoln Road; Northeast on Lincoln Road to Bryant Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 5C07 Boundaries

All streets are in the Northwest quadrant unless otherwise designated. Beginning at the intersection of Park Place and Irving Street; East on Irving Street to North Capitol Street; Southwest on North Capitol Street to Hawthorne Drive, N.E.; Counter-clockwise around Hawthorne Drive, N.E. to Gentain Court, N.E. South on Gentain Court, N.E. to Michigan Avenue, N.E.; Northeast on Michigan Avenue, N.E. to Franklin Street, N.E.; Southeast on Franklin Street, N.E. to Lincoln Road, N.E.; Southeast on Lincoln Road, N.E. to V Street, N.E.; East on V Street, N.E. to Rhode Island Avenue, N.E.; Southwest on Rhode Island Avenue, N.E. to North Capitol Street, N.E.; North on North Capitol Street, N.E. to Adams Street; West on Adams Street to 2nd Street; North on 2nd Street to Bryant Street; Northeast on Bryant Street to 1st Street; North on 1st Street to Michigan Avenue; West on Michigan Avenue to Park Place; North on Park Place to Irving Street.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(ppp) Description of SMD 5C08 Boundaries

All streets are in the Northeast quadrant unless otherwise designated. Beginning at Lincoln Road and Douglas Street; East on Douglas Street to Edgewood Street; Northeast on Edgewood Street to Franklin Street; East on Franklin Street to the CSX Railroad tracks; Southeast on the CSX Railroad tracks to Rhode Island Avenue; Southwest on Rhode Island Avenue to 4th Street; North on 4th Street to Bryant Street; West on Bryant Street to Lincoln Road; Northeast on Lincoln Road to Douglas Street.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(qqq) Description of SMD 5C09 Boundaries

All streets are in the Northeast quadrant unless otherwise designated. Beginning at 4th Street and Michigan Avenue; Northeast on Michigan Avenue to Kearney Street; South and East on Kearney Street (which forms the border of census block 3002 in tract 92.01) to 7th Street; South on 7th Street to Jackson Street;

East on Jackson Street to 8th Street; North on 8th Street to Monroe Street; East on Monroe Street to the CSX Railroad tracks; South on the CSX Railroad tracks to Franklin Street; East on Franklin Street to Edgewood Street; Southeast on Edgewood Street to Douglas Street; East on Douglas Street to Lincoln Road; North on Lincoln Road to Franklin Street; West on Franklin Street to Michigan Avenue; Northeast on Michigan Avenue to 4th Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 5C10 Boundaries

All streets are in the Northeast quadrant unless otherwise designated. Beginning at the intersection North Capitol Street and Harewood Road; Southeast on Harewood Road to Fort Drive; East on Fort Drive to Taylor Street; East on Taylor Street to the CSX Railroad tracks; South on the CSX Railroad tracks to Monroe Street; West on Monroe Street to 8th Street; South on 8th Street to Jackson Street; West on Jackson Street to 7th Street; North on 7th Street to Kearney Street; Northwest on Kearney Street to Michigan Avenue; Southeast on Michigan Avenue to Harewood Road; North on Harewood Road to Scale Gate Road; West on Scale Gate Road to North Capitol Street; North on North Capitol Street to Harewood Road.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 5C11 Boundaries

All streets are in the Northeast quadrant unless otherwise specified. Beginning at Michigan Avenue and Harewood Road; Southwest on Michigan Avenue to Gentain Court; North on Gentain Court to Hawthorne Drive; Clockwise on Hawthorne Drive to North Capitol Street; North on North Capitol Street to Irving Street; West on Irving Street, N.W. to Park Place, N.W.; North on Park Place, N.W. to Rock Creek Church Road, N.W.; Northeast on Rock Creek Church Road, N.W. to Harewood Road, N.W.; Southeast on Harewood Road N.W. to North Capitol Street; South on North Capitol Street to Scale Gate Road; East on Scale Gate Road to Harewood Road; South on Harewood Road to Michigan Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(rrr) Description of SMD 5C12 Boundaries

All Streets in the Northeast quadrant unless otherwise specified. Beginning at Allison Street and Fort Totten Drive; Southeast on Fort Totten Drive to Hawaii Avenue; Southeast on Hawaii Avenue to Taylor Street; West on Taylor Street to Fort Drive; North on Fort Drive to Harewood Road, N.W.; Northwest on Harewood Road, N.W. to Rock Creek Church Road, N.W.; Northeast on Rock Creek Church Road, N.W. to Allison Street, N.W.; Northeast on Allison Street, N.W. to Fort Totten Drive.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of ANC 6A Boundaries

All streets are in the Northeast quadrant unless otherwise designated. From the intersection of Florida Avenue and 7th Street; South on 7th Street to H Street; East on H Street to 8th Street; South on 8th Street to East Capitol Street; East on East Capitol Street to 11th Street; South on 11th Street, S.E. to East Capitol Street, S.E.; East on East Capitol Street, S.E. to 13th Street, S.E.; North on 13th Street, S.E. to East Capitol Street; East on East Capitol Street to 22nd Street; North on 22nd Street to C Street; West on C Street to 19th Street; North 19th Street to Benning Road; West on Benning Road to Florida Avenue; Northwest on Florida Avenue to the intersection of Florida Avenue and 7th Street.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(sss) Description of SMD 6A01 Boundaries

All streets are in the Northeast quadrant unless otherwise designated. From the intersection of Florida Avenue and 7th Street; South on 7th Street to H Street; East on H Street to 13th Street; North on 13th Street to Florida Avenue; Northwest on Florida Avenue to the intersection of Florida Avenue and 7th Street.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(ttt) Description of SMD 6A02 Boundaries

All streets are in the Northeast quadrant unless otherwise designated. From the intersection of 8th Street and H Street; South on 8th Street to E Street; East on E Street to 12th Street; North on 12th Street to G Street; East on G Street to 13th Street; North on 13th Street to H Street; West on H Street to the intersection of H Street and 8th Street.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(uuu) Description of SMD 6A03 Boundaries

All streets are in the Northeast quadrant unless otherwise designated. From the intersection of 8th Street and E Street; South on 8th Street to East Capitol Street; East on East Capitol Street to 11th Street; North on 11th Street to the north side of East Capitol Street; East on the North side of East Capitol Street to 12th Street; North on 12th Street to Constitution Avenue; East on Constitution Avenue to 13th Street; North on 13th Street to C Street; West on C Street to 10th Street; North on 10th Street to E Street; West on E Street to the intersection of E Street and 8th Street.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(vvv) Description of SMD 6A04 Boundaries

All streets are in the Northeast quadrant unless otherwise designated. From the intersection 12th Street and the south side of East Capitol Street; North on 12th Street to Constitution Avenue; East on Constitution Avenue to 13th Street; North on 13th Street to C Street; East on C Street to 15th Street; South on 15th

Street to North Carolina Avenue; Northeast on North Carolina Avenue to 16th Street; South on 16th Street to East Capitol Street; West on East Capitol Street to 13th Street; South on 13th Street to East Capitol Street, S.E.; West on East Capitol Street, S.E. to 11th Street, S.E.; North on 11th Street, S.E. to East Capitol Street; East on East Capitol Street to the intersection of 12th Street and East Capitol Street.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(www) Description of SMD 6A05 Boundaries

All streets are in the Northeast quadrant unless otherwise designated. From the intersection of 10th Street and C Street; North on 10th Street to E Street; East on E Street to 15th Street; South on 15th Street to Isherwood Street; East on Isherwood Street to 16th Street; South on 16th Street to North Carolina Avenue; Southwest on North Carolina Avenue to 15th Street; North on 15th Street to C Street; West on C Street to the intersection of C Street and 10th Street.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(xxx) Description of SMD 6A06 Boundaries

All streets are in the Northeast quadrant unless otherwise designated. Beginning at the intersection of 13th Street and Florida Avenue; Southeast on Florida Avenue to 15th Street; South on 15th Street to Gales Street; Southeast on Gales Street to 16th Street; South on 16th Street to F Street; West of F Street to 15th Street; South on 15th Street to E Street; West on E Street to 12th Street; North on 12th Street to G Street; East on G Street to 13th Street; North on 13th Street to the intersection of 13th Street and Florida Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(yyy) Description of SMD 6A07 Boundaries

All streets are in the Northeast quadrant unless otherwise designated. Beginning at the intersection of 15th Street and Benning Road; East on Benning Road to 19th Street; South on 19th Street to E Street; West on E Street to 16th Street; South on 16th Street to Isherwood Street; West on Isherwood Street to 15th Street; North on 15th Street to F Street; East on F Street to 16th Street; North on 16th Street to Gales Street; Northwest on Gales Street to 15th Street; North on 15th Street to the intersection of 15th Street and Benning Road.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(zzz) Description of SMD 6A08 Boundaries

All streets are in the Northeast quadrant unless otherwise designated. Beginning at the intersection of 16th Street and East Capitol Street; East on East Capitol Street to 22nd Street; North on 22nd Street to C Street; West on C Street to 19th Street; North on 19th Street

to E Street; West on E Street to 16th Street; South on 16th Street to the intersection of 16th Street and East Capitol Street.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(aaaa) Description of ANC 6B Boundaries

All streets are in the Southeast quadrant unless otherwise designated. Beginning at the center of the United States Capitol Building at the intersection of two imaginary lines extending and joining East Capitol Street and South Capitol Street; East on East Capitol Street to 11th Street; South on 11th Street to East Capitol Street; East on East Capitol Street to 13th Street; North on 13th Street to East Capitol Street; East on East Capitol Street to the Anacostia River; Southeast on the Anacostia River to Interstate 295 at the Kevin J. Welsh Memorial Bridge; North on Interstate 295 to 11th Street; North on 11th Street to M Street; West on M Street to 7th Street; North on 7th Street to the Southeast Expressway; Northwest on the Southeast Expressway to South Capitol Street; North on South Capitol Street to the point of beginning.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(bbbb) Description of SMD 6B01 Boundaries

All streets are in the Southeast quadrant unless otherwise designated. Beginning at the intersection of the Southeast Expressway and South Capitol Street; North on South Capitol Street and on a line extending South Capitol Street through the Capitol Building to a line extending East Capitol Street; East on said line and East Capitol Street to 5th Street; South on 5th Street to A Street; West on A Street to 4th Street; South on 4th Street to North Carolina Avenue; Southwest on North Carolina Avenue to 3rd Street; South on 3rd Street to the Center of the Southeast Expressway; Northwest on the Southeast Expressway to South Capitol Street.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(cccc) Description of SMD 6B02 Boundaries

All streets are in the Southeast quadrant unless otherwise designated. Beginning at the intersection of 5th Street and East Capitol Street; South on 5th Street to A Street; West on A Street to 4th Street; South on 4th Street to Pennsylvania Avenue; Southeast on Pennsylvania Avenue to the southeast intersection of 6th Street and Seward Square; West on Seward Square to 5th Street; South on 5th Street to D Street; East on D to 7th Street; South on 7th Street to E Street; East on E Street to 8th Street; North on 8th Street to D Street on the south side of the square; East on D Street to 9th Street; North on 9th Street to D Street on the north side of the square; West on D Street to 8th Street; North on 8th Street to A Street; East on A Street to 9th Street; North on 9th Street to

East Capitol Street; West on East Capitol Street to 5th Street.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(dddd) Description of SMD 6B03 Boundaries

All streets are in the Southeast quadrant unless otherwise designated. Beginning at the intersection of the Southeast Expressway and 3rd Street; North on 3rd Street to North Carolina Avenue; Northeast on North Carolina Avenue to 4th Street; North on 4th Street to Pennsylvania Avenue; Southeast on Pennsylvania Avenue to the southeast intersection of 6th Street and Seward Square; West on Seward Square to 5th Street; South on 5th Street to D Street; East on D Street to 7th Street; South on 7th Street to E Street; East on E Street to 8th Street; South on 8th Street to the Southeast Expressway; Northwest on the Southeast Expressway to 3rd Street.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(eeee) Description of SMD 6B04 Boundaries

All streets are in the Southeast quadrant unless otherwise designated. Beginning at the center point of the Southeast Expressway at 8th Street; Northwest on the Southeast Expressway to 7th Street; South on 7th Street to M Street; East on M Street to 11th Street; North on 11th Street to K Street; East on K Street to 12th Street; North on 12th Street to G Street; East on G Street to 13th Street; North on 13th Street to E Street; West on E Street to 12th Street; North on 12th Street to C Street (westbound); West on C Street to 9th Street; South on 9th Street to D Street on the south side of the square; West on D Street to 8th Street; South on 8th Street to the center point of the Southeast Expressway.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(ffff) Description of SMD 6B05 Boundaries

All streets are in the Southeast quadrant unless otherwise designated. Beginning at the intersection of 9th Street and East Capitol Street; East on East Capitol Street to 11th Street; South on 11th Street to East Capitol Street; East on East Capitol Street to 13th Street; South on 13th Street to Walter Street; West on Walter Street to 12th Street; South on 12th Street to C Street; West on C Street to 9th Street; South on 9th Street to D Street; West on D Street to 8th Street; North on 8th Street to A Street; East on A Street to 9th Street; North on 9th Street to East Capitol Street.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(gggg) Description of SMD 6B06 Boundaries

All streets are in the Southeast quadrant unless otherwise designated. Beginning at the intersection of 13th Street and Walter Street; West on Walter Street to 12th Street; South on 12th Street to E Street; East on E Street to 13th

Street; South on 13th Street to G Street; East on G Street to Pennsylvania Avenue; Southeast on Pennsylvania Avenue to 14th Street; South on 14th Street to L Street; East on L Street to Pennsylvania Avenue; Northwest on Pennsylvania Avenue to 15th Street; North on 15th Street to D Street; West on D Street to 14th Street; North on 14th Street to C Street; West on C Street to 13th Street; North on 13th Street to Walter Street.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(hhhh) Description of SMD 6B07 Boundaries

All streets are in the Southeast quadrant unless otherwise designated. Beginning at the intersection of G Street and 12th Street; South on 12th Street to K Street; West on K Street to 11th Street; South on 11th Street to the centerline of the Anacostia River; East on the centerline of the Anacostia River to Pennsylvania Avenue; Northwest on Pennsylvania Avenue to L Street; West on L Street to 14th Street; North on 14th Street to Pennsylvania Avenue; Northwest on Pennsylvania Avenue to G Street; West on G Street to the intersection of G Street and 12th Street.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(iiii) Description of SMD 6B08 Boundaries

All streets are in the Southeast quadrant unless otherwise designated. Beginning at the intersection of East Capitol Street and 13th Street; East on East Capitol Street to 16th Street; South on 16th Street to A Street; East on A Street to 17th Street; South on 17th Street to Independence Avenue; West on Independence Avenue to 16th Street; South on 16th Street to C Street; West on C Street to 15th Street; South on 15th Street to D Street; West on D Street to 14th Street; North on 14th Street to C Street; West on C Street to 13th Street; North on 13th Street to the intersection of 13th Street and East Capitol Street.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(jjjj) Description of SMD 6B09 Boundaries

All streets are in the Southeast quadrant unless otherwise designated. Beginning at the intersection of C Street and 15th Street; South on 15th Street to Pennsylvania Avenue; Southeast on Pennsylvania Avenue to the centerline of the Anacostia River; East on the centerline of the Anacostia River to the boundary line extended between Congressional Cemetery and D.C. Jail; North on the boundary line extended between Congressional Cemetery and D.C. Jail to the E Street; West on E Street to 18th Street; North on 18th Street to Massachusetts Avenue; Northwest on Massachusetts Avenue to 17th Street; North on 17th Street to Independence Avenue; West on Independence Avenue to 16th Street; South on 16th Street to C Street; West

on C Street to the intersection of C Street and 15th Street.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(kkkk) Description of SMD 6B10 Boundaries

All streets are in the Southeast quadrant unless otherwise designated. Beginning at the intersection of 16th Street and East Capitol Street; East on East Capitol Street to the centerline of the Anacostia River; Southwest on the Anacostia River to Massachusetts Avenue extended; Northwest on Massachusetts Avenue extended to 19th Street; South on 19th Street to E Street; West on E Street to 18th Street; North on 18th Street to Massachusetts Avenue; Northwest on Massachusetts Avenue to 17th Street; North on 17th Street to A Street; West on A Street to 16th Street; North on 16th Street to the intersection of 16th Street and East Capitol Street.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(llll) Description of SMD 6B11 Boundaries (D.C. JAIL)

All streets are in the Southeast quadrant unless otherwise designated. Beginning at the intersection of 19th Street and Massachusetts Avenue; Southeast on Massachusetts Avenue extended to the centerline of the Anacostia River; Southwest on the Anacostia River to the boundary line extended between Congressional Cemetery and D.C. Jail; North on the boundary line extended between Congressional Cemetery and D.C. Jail to E Street; West on E Street to 19th Street; North on 19th Street to the intersection of 19th Street and Massachusetts Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(mmmm) Description of ANC 6C Boundaries

All streets are in the Northwest quadrant unless otherwise specified. Starting at the intersection of 7th Street N.E. and Florida Avenue, N.E.; West on Florida Avenue, N.E. to New York Avenue, N.E.; West on New York Avenue to Kirby Street; North on Kirby Street to N Street; West on N Street to 4th Street; South on 4th Street to New York Avenue; West on New York Avenue to 6th Street; South on 6th Street to E Street; West on E Street to 9th Street; South on 9th Street to Pennsylvania Avenue; East on Pennsylvania Avenue to Constitution Avenue; East on Constitution Avenue to North Capitol Street; South on North Capitol and a line extending North Capitol through the Capitol Building to a line extending East Capitol Street west; East on said line and East Capitol to 8th Street, N.E.; North on 8th Street to H Street, N.E.; West on H Street to 7th Street, N.E.; North on 7th Street, N.E. to Florida Avenue, N.E.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(nnnn) Description of SMD 6C01 Boundaries

All Streets are in the Northwest quadrant. Starting at the intersection of K Street and North Capitol Street; West on K Street to 4th Street; North on 4th Street to L Street; West on L Street to 5th Street; North on 5th Street to New York Avenue; Southwest on New York Avenue to 6th Street; South on 6th Street to Massachusetts Avenue; Southeast on Massachusetts Avenue to 3rd Street; South on 3rd Street to E Street; East on E Street to First Street; North on First Street to F Street; East on F Street to North Capitol Street; North on North Capitol Street to K Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 6C02 Boundaries

All Streets are in the Northwest quadrant. Starting at the intersection of New York Avenue and North Capitol Street; Southwest on New York Avenue to Kirby Street; North on Kirby Street to N Street; West on N Street to 4th Street; South on 4th Street to New York Avenue; West on New York Avenue to 5th Street; South on 5th Street to L Street; East on L Street to 4th Street; South on 4th Street to K Street; East on K Street to First Street; North on First Street to M Street; East on M Street to North Capitol Street; North on North Capitol Street to New York Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 6C03 Boundaries

All Streets are in the Northwest quadrant. Starting at the intersection of North Capitol Street and M Street; West on M Street to First Street; South on First Street to K Street; East on K Street to North Capitol Street; North on North Capitol Street to M Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 6C04 Boundaries

All Streets are in the Northeast quadrant. Starting at the intersection of 7th Street and Florida Avenue; West on Florida Avenue to New York Avenue; West on New York Avenue to North Capitol Street; South on North Capitol to K Street; East on K Street to 4th Street; South on 4th Street to I Street; East on I Street to 6th Street; North on 6th Street to K Street; East on K Street to 7th Street; North on 7th Street to Florida Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 6C05 Boundaries

All Streets are in the Northeast quadrant. Starting at the intersection of K Street and 7th Street; West on K Street to 6th Street; South on 6th Street to I Street; West on I Street to 4th Street; North on 4th Street to K Street; West on K Street to North Capitol Street; South on North Capitol to Massachusetts Avenue; East on Massachusetts to Columbus Circle; Counterclockwise around Columbus Circle to F Street; East on F Street to 6th Street; North on 6th Street to Morris Place; East on Morris Place to 7th Street; North on 7th Street to G Street; East on G Street to 8th Street; North on 8th

Street to H Street; West on H Street to 7th Street; North on 7th Street to K Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description SMD 6C06 Boundaries

All Streets are in the Northeast quadrant. Starting at the intersection of 8th Street and G Street; West on G Street to 7th Street; South on 7th Street to Morris Place; West on Morris Place to 6th Street; South on 6th Street to F Street; West on F Street to 5th Street; South on 5th Street to C Street (North of Stanton Park); East on C Street to 6th Street; South on 6th Street to Massachusetts Avenue; East on Massachusetts Avenue to 8th Street; North on 8th Street to G Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 6C07 Boundaries

All Streets are in the Northeast quadrant. Starting at the intersection of Massachusetts Avenue and 8th Street; Northwest on Massachusetts Avenue to the corner of C (south of Stanton Park) and 6th Streets; West on C Street to 4th Street; South on 4th Street to Constitution Avenue; East on Constitution Avenue to North Capitol Street; South on North Capitol and a line extending North Capitol through the Capitol Building to a line extending East Capitol Street west; East on East Capitol to 8th Street; North on 8th Street to Massachusetts Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(oooo) Description of SMD 6C08 Boundaries

All Streets are in the Northeast quadrant. Starting at the intersection of 5th Street and F Street; West on F Street to Columbus Circle; Clockwise around Columbus Circle to Massachusetts Avenue on the west side of Columbus Circle; West on Massachusetts Avenue to North Capitol Street; South on North Capitol Street to F Street; West on F Street to First Street; South on First Street to E Street; East on E Street to New Jersey Avenue; South on New Jersey Avenue to Constitution Avenue; East on Constitution Avenue to 4th Street; North on 4th Street to C Street (South border on Stanton Park); East on C Street to 6th Street; North on 6th Street to C Street (North border of Stanton Park); West on C Street to 5th Street; North on 5th Street to F Street.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(pppp) Description of SMD 6C09 Boundaries

All Streets are in the Northwest Quadrant. Starting at the intersection of Massachusetts Avenue and 3rd Street; West on Massachusetts Avenue to 6th Street; South on 6th Street to E Street; West on E Street to 9th Street; South on 9th Street to Pennsylvania Avenue; East on Pennsylvania Avenue to Constitution Avenue; East on Constitution Avenue to New Jersey Avenue; North on New Jersey Avenue to E

Street; West on E Street to Third Street; North on Third Street to H Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of ANC 6D Boundaries

All streets are in the Southwest quadrant unless otherwise designated. Beginning at the intersection of 15th Street and Independence Avenue; East on Independence Avenue to South Capitol Street; South on South Capitol Street to the Southeast Freeway; East on the Southeast Freeway to 7th Street S.E.; South on 7th Street, S.E. to M Street, S.E.; East on M Street, S.E. to the Interstate 295; South on Interstate 295 to the Kevin J. Welsh Memorial Bridge at the centerline of the Anacostia River; Southwest on the centerline of the Anacostia River and an extension of the centerline of the Anacostia River to the Virginia shore of the Potomac River; North on the Virginia shore of the Potomac River to the George Mason Memorial Bridge; Northeast on the George Mason Memorial Bridge to Maine Avenue; Northwest on Maine Avenue to 15th Street; North on 15th Street to Independence Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(qqqq) Description of SMD 6D01 Boundaries

All streets are in the Southwest quadrant. Beginning at the intersection of Independence Avenue and 15th Street; East on Independence Avenue to 4th Street; South on 4th Street to M Street, bisecting the Waterside (Waterfront) Mall; West on M Street, and along a line extending M Street to the George Mason Memorial Bridge; Northeast on the George Mason Memorial Bridge to Maine Avenue; Northwest on Maine Avenue to 15th Street; North on 15th Street to Independence Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 6D02 Boundaries

All streets are in the Southwest quadrant. Beginning at the intersection of Independence Avenue and 4th Street; South on 4th Street to G Street; East on G Street to 3rd Street; South on 3rd Street to I Street; East on I Street to Delaware Avenue; Northeast on Delaware Avenue to H Street; East on H Street to First Street extended; South on First Street to I Street; East on I Street to South Capitol Street; North on South Capitol Street to Independence Avenue; West on Independence Avenue to 4th Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 6D03 Boundaries

All streets are in the Southwest quadrant. Beginning at the intersection of 4th Street and G Street; South on 4th Street to M Street, bisecting Waterside (Waterfront) Mall; East on M Street to Half Street; South on Half Street to N Street; East on N Street to South Capitol Street; North on South Capitol Street to I Street; West on I Street to First Street; North on First Street to H Street; West on H Street to

Delaware Avenue; Southwest on Delaware Avenue to I Street; West on I Street to 3rd Street; North on 3rd Street to G Street; West on G Street to 4th Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 6D04 Boundaries

All streets are in the Southwest quadrant. Beginning at the intersection of M Street and 4th Street; South on 4th Street to O Street; East on O Street and O Street extended to 3rd Street; South on 3rd Street to P Street; West on P Street and P Street extended to the Virginia shore of the Potomac River; Northwest on the Virginia shore of the Potomac River to the George Mason Memorial Bridge; Northeast on the George Mason Memorial Bridge to M Street extended; East on M Street extended and M Street to 4th Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 6D05 Boundaries

All streets are in the Southwest quadrant. Beginning at the intersection of M Street and 4th Street; South on 4th Street to O Street; East on O Street and O Street extended to 3rd Street; South on 3rd Street to P Street; West on P Street and a line extending P Street to the Virginia shore of the Potomac River; Southeast on the Virginia shore of the Potomac River to the extension of the centerline of the Anacostia River; Northeast on the centerline of the Anacostia River to Half Street extended; North on Half Street and Half Street extended to S Street; West on S Street to Canal Street; North on Canal Street to P Street; East on P Street to Canal Street; North on Canal Street to Delaware Avenue; Northwest then Northeast on Delaware Avenue to M Street; West on M Street to 4th Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 6D06 Boundaries

All streets are located in the Southwest quadrant. Beginning at the intersection of Half Street extended to the Anacostia River; North on Half Street extended and Half Street to S Street; West on S Street to Canal Street (Fort McNair Wall); North on Canal Street to P Street; East on P Street to Canal Street; North on Canal Street to Delaware Avenue; Northwest then Northeast on Delaware Avenue to M Street; East on M Street to Half Street; South on Half Street to N Street; East on N Street to South Capitol Street; South on Capitol Street to the Frederick Douglass Bridge; Southeast on the Frederick Douglass Bridge to the Anacostia River; Southwest on the Anacostia River to Half Street extended.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(rrrr) Description of SMD 6D07 Boundaries

All streets are located in the Southeast quadrant unless otherwise designated. Beginning at the intersection of the Southeast Freeway and South Capitol Street; South on South Capitol

Street to the Anacostia River; Northeast on the Anacostia River to Interstate 295 at the Kevin J. Welsh Memorial Bridge; North on Interstate 295 to M Street; West on M Street to 7th Street; North on 7th Street to the Southeast Freeway; Northwest on the Southeast Freeway to South Capitol Street.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(ssss) Description of ANC 7A Boundaries

All streets are located in the Southeast quadrant. Beginning at the intersection of East Capitol Street and the Anacostia River; East on East Capitol Street to the CSX Railroad tracks; North along the CSX Railroad tracks to Benning Road; East on Benning Road to 40th Street; South on 40th Street to Blaine Street; East on Blaine Street to 41st Street; North on 41st Street to Benning Road; East on Benning Road to 42nd Street; South on 42nd Street to East Capitol Street; East on East Capitol Street to Texas Avenue; South on Texas Avenue to C Street; East on C Street to Benning Road; South on Benning Road to G Street; West on G Street to Ridge Road; North on Ridge Road to Fort Davis Drive; West on Fort Davis Drive to Fort Dupont Drive; West on Fort Dupont Drive to Minnesota Avenue; South on Minnesota Avenue to 30th Street; South on 30th Street to Pennsylvania Avenue; Northwest on Pennsylvania Avenue to 28th Street; South on 28th Street to Q Street; West on Q Street to 27th Street; North on 27th Street to Park Place; West on Park Place to 25th Street; North on 25th Street to Pennsylvania Avenue; West on Pennsylvania Avenue to the Anacostia River; North along the Anacostia River to East Capitol Street.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(tttt) Description of SMD 7A01 Boundaries

All of the following streets in the Southeast quadrant. Beginning at Texas Avenue and C Street; East on C Street to Benning Road; South on Benning Road to G Street; West on G Street to Alabama Avenue; North on Alabama Avenue to E Street; West on E Street to Texas Avenue; North on Texas Avenue to C Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 7A02 Boundaries

All of the following streets are in the Southeast quadrant. Beginning at East Capitol Street and Burns Streets; East on East Capitol Street to Texas Avenue; South on Texas Avenue to E Street; East on E Street to Alabama Avenue; South on Alabama Avenue to G Street; West on G Street to Ridge Road; North on Ridge Road to E Street; East on E Street to 40th Place; North on 40th Place to Burns Street; North on Burns Street to East Capitol Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 7A03 Boundaries

All of the following streets are in the Southeast quadrant. Beginning at East Capitol Street and 35th Street; South on 35th Street to A Street; East on A Street to Minnesota Avenue; South on Minnesota Avenue to G Street; West on G Street and a line extending G Street to the Anacostia River; North along the Anacostia River to East Capitol Street; East on East Capitol Street to 35th Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 7A04 Boundaries

All of the following streets are in the Southeast quadrant. Beginning at East Capitol and 35th Streets; East on East Capitol Street to Ridge Road; South on Ridge Road to 37th Street; South on 37th Street to Ely Place; East on Ely Place to Ridge Road; South on Ridge Road to Fort Davis Drive; South on Fort Davis Drive to Fort Dupont Drive; West on Fort Dupont Drive to Randle Circle; Clockwise around Randle Circle to Minnesota Avenue; North on Minnesota Avenue to A Street; West on A Street to 35th Street; North on 35th Street to East Capitol Street.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(uuuu) Description of SMD 7A05 Boundaries

All of the following streets are in the Southeast quadrant. Beginning at East Capitol Street and Ridge Road; East on East Capitol Street to B Street; Southwest on B Street to Burns Street extended; South on Burns Street extended to 40th Place; South on 40th Place to E Street; West on E Street to Ely Place; East on Ely Place to 37th Street; North on 37th Street to Ridge Road; North on Ridge Road to East Capitol Street.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(vvvv) Description of SMD 7A06 Boundaries

All of the following streets in the Northeast quadrant. Beginning at East Capitol Street and the CSX Railroad tracks; Northeast on the CSX Railroad tracks to Benning Road; East on Benning Road to 40th Street; South on 40th Street to Blaine Street; East on Blaine Street and a line extending Blaine to 41st Street; North from that point to 41st Street and Flint Place; North on 41st Street to Benning Road; Southeast on Benning Road to 42nd Street; South on 42nd Street to East Capitol Street; West on East Capitol Street to the CSX Railroad tracks.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(wwww) Description of SMD 7A07 Boundaries

All of the following streets are in the Southeast quadrant. Beginning at Minnesota Avenue and G Street; South on Minnesota Avenue to 30th Street; South on 30th Street to Pennsylvania Avenue; Northwest on Pennsylvania Avenue to 28th Street; South on 28th Street to Q Street; West on Q Street to 27th Street; North

on 27th Street to Park Place; West on Park Place to 25th Street; North on 25th Street to Pennsylvania Avenue; Northwest on Pennsylvania Avenue to the Anacostia River; North on the Anacostia River to a line extending to G Street to the Anacostia River; East on said line and on G Street to Minnesota Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of ANC 7B Boundaries

All streets are located in the Southeast quadrant. Beginning at the southern intersection of Minnesota Avenue and Randle Circle; Counterclockwise around Randle Circle to Fort Dupont Drive; East on Fort Dupont Drive to Fort Davis Drive; South on Fort Davis Drive to Massachusetts Avenue; East on Massachusetts Avenue to 42nd Street; South on 42nd Street to Fort Dupont Street; Southwest on Fort Dupont Street to Q Street; North on Q Street to Fort Davis Street; South on Fort Davis Street to R Street; East on R Street to 40th Street; South on 40th Street to Pennsylvania Avenue; East on Pennsylvania Avenue to Southern Avenue; South on Southern Avenue to Naylor Road; North on Naylor Road to Alamont Place; South on Alamont Place to Good Hope Road; Northwest on Good Hope Road to Minnesota Avenue; North on Minnesota Avenue to S Street; East on S Street to 25th Street; North on 25th Street to Park Place; East on Park Place to 27th Street; South on 27th Street to Q Street; East on Q Street to 28th Street; North on 28th Street to Pennsylvania Avenue; Southeast on Pennsylvania Avenue to 30th Street; North on 30th Street to Minnesota Avenue; Northeast on Minnesota Avenue to Randle Circle.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(xxxx) Description of SMD 7B01 Boundaries

All of the following streets are in the Southeast quadrant. Beginning at the intersection of 22nd and S Streets; West on S Street to Minnesota Avenue; Southwest on Minnesota Avenue to Good Hope Road; Southeast on Good Hope Road to 23rd Street; North on 23rd Street to T Place; North on T Place to 21st Place; North on 21st Place to T Street; East on T Street to 22nd Street; North on 22nd Street to S Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 7B02 Boundaries

All of the following streets are in the Southeast quadrant. Beginning at 28th Street and Pennsylvania Avenue; South on 28th to R Street; West on R to 27th Street; South on 27th Street to Naylor Road; South on Naylor Road to Alabama Avenue; North on Alabama Avenue to 32nd Place; North on 32nd Place to W Street; West on W Street to 31st Street; North on 31st Street to V Place; West on V Place to 30th Street; North on 30th Street to Pennsylvania Avenue; North on Pennsylvania Avenue to 28th Street.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(yyyy) Description of SMD 7B03 Boundaries

All of the following streets are in the Southeast quadrant. Beginning at the intersection of S Street and 25th Street; East on S Street to 22nd Street; South on 22nd Street to T Street; West on T Street to 21st Place; South on 21st Place to T Place; South on T Place to 23rd Street; South on 23rd Street to Good Hope Road; South on Good Hope Road to Altamont Place; North on Altamont Place to Naylor Road; North on Naylor Road to 27th Street; North on 27th Street to R Street; East on R Street to 28th Street; North on 28th Street to Q Street; West on Q Street to 27th Street; North on 27th Street to Park Place; West on Park Place to 25th Street; South on 25th Street to S Street.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(zzzz) Description of SMD 7B04 Boundaries

All of the following streets are in the Southeast quadrant. Beginning Massachusetts Avenue and Randle Circle; Clockwise around Randle Circle to Minnesota Avenue; South on Minnesota Avenue to 30th Street; South on 30th Street to V Place; East on V Place to 31st Street; South on 31st Street to W Street; East on W Street to 32nd Place; South on 32nd Place to Alabama Avenue; North on Alabama Avenue to Pennsylvania Avenue; North on Pennsylvania Avenue to Texas Avenue; Northeast on Texas Avenue to Carpenter Street; Northwest on Carpenter Street to Highwood Drive; North on Highwood Drive to Nash Street; East on Nash Street to Pope Street; North on Pope Street to Branch Avenue; North on Branch Avenue to M Street; East on M Street to 34th Street; North on 34th Street to Massachusetts Avenue; Northwest on Massachusetts Avenue to Randle Circle.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(aaaaa) Description of SMD 7B05 Boundaries

All of the following streets are in the Southeast quadrant. Beginning at Southern Avenue and Naylor Road; Northeast on Southern Avenue to 34th Street; Northwest on 34th Street to Highview Terrace; Southeast on Highview Terrace to Denver Street; Northeast on Denver Street to Branch Avenue; Northeast on Branch Avenue to Camden Street; East on Camden Street to 36th Street; North on 36th Street to Bangor Street; West on Bangor Street to Branch Avenue; Northeast on Branch Avenue to Alabama Avenue; Southwest on Alabama Avenue to Naylor Road; Southeast on Naylor Road to Southern Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(bbbbb) Description of SMD 7B06 Boundaries

All of the following streets are in the Southeast quadrant. Beginning at Southern Avenue

and 34th Street; Northeast on Southern Avenue to Pennsylvania Avenue; Northwest on Pennsylvania Avenue to Alabama Avenue; Southwest on Alabama Avenue to Branch Avenue; South on Branch Avenue to Bangor Street; East on Bangor Street to 36th Street; South on 36th Street to Camden Street; East on Camden Street to Branch Avenue; South on Branch Avenue to Denver Street; Southeast on Denver Street to Highview Terrace; Northeast on Highview Terrace to 34th Street; South on 34th Street to Southern Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 7B07 Boundaries

All of the following streets are in the Southeast quadrant; Beginning at Massachusetts Avenue and 34th Street; South on 34th Street to M Street; West on M Street to Branch Avenue; South on Branch Avenue to Pope Street; South on Pope Street to Nash Place; West on Nash Place to Highwood Drive; South on Highwood Drive, past its first intersection with Carpenter Street to its second intersection with Carpenter Street; Southeast on Carpenter Street to Texas Avenue; Southwest on Texas Avenue to Pennsylvania Avenue; Southeast on Pennsylvania Avenue to 40th Street; North on 40th Street R Street; Northwest on R Street to Fort Davis Street; Northwest on Fort Davis Street to Q Street; Southeast on Q Street to Fort Dupont Street; Northeast on Fort Dupont Street to 42nd Street; North on 42nd Street to Massachusetts Avenue; Northeast on Massachusetts Avenue to Fort Davis Drive; North on Fort Davis Drive to Fort Dupont Drive; Northwest on Fort Dupont Drive to Randle Circle; Clockwise around Randle Circle to Massachusetts Avenue; Southeast on Massachusetts Avenue to 34th Street.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(ccccc) Description of ANC 7C Boundaries

All streets are located in the Northeast quadrant. Beginning at the intersection of Eastern Avenue and the Minnesota Avenue; Southeast along Eastern Avenue to Southern Avenue; Southwest along Southern Avenue to East Capitol Street; West on East Capitol Street to 47th Street; North on 47th Street to 47th Place; South on 47th Place to Edson Place; West on Edson Place to 45th Street; North on 45th Street to Foote Street; East on Foote Street to 46th Street; North on 46th Street to Grant Street; West on Grant Street to 44th Street; North on 44th Street to Nannie Helen Burroughs Avenue; Northwest on Nannie Helen Burroughs Avenue to Minnesota Avenue; North on Minnesota Avenue to Sheriff Road; East on Sheriff Road to 45th Street; North on 45th Street to Minnesota Avenue; Northeast on Minnesota Avenue to Eastern Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 7C01 Boundaries

All of the following streets are in the Northeast quadrant. Beginning at 44th Street and Nannie Helen Burroughs Avenue; East on Nannie Helen Burroughs Avenue to 48th Street; North on 48th Street to Hayes Street; East on Hayes Street to 48th Place; North on 48th Place to Jay Street; East on Jay Street to 50th Place; South on 50th Place to Hayes Street; East on Hayes Street to Division Avenue; South on Division Avenue to Cloud Place; West on Cloud Place to 51st Street; North on 51st Street to Fitch Place; Northwest on Fitch Place to 49th Place; North on 49th Place to Nannie Helen Burroughs Avenue; West on Nannie Helen Burroughs Avenue to Watts Branch Creek; West on Watts Branch Creek to 48th Place; South on 48th Place to Foote Street; West on Foote Street to 47th Place; South on 47th Place to Edson Place; West on Edson Place to 45th Street; North on 45th Street to Foote Street; East on Foote Street to 46th Street; North on 46th Street to Grant Street; West on Grant Street to 44th Street; North on 44th Street to Nannie Helen Burroughs Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 7C02 Boundaries

All of the following streets are in the Northeast quadrant. Beginning at Division Avenue and Watts Branch Creek; East on Watts Branch Creek to 55th Street; South on 55th Street to Clay Place; East on Clay Place to 57th Street; South on 57th Street to Blaine Street; East on Blaine Street to 57th Place; South on 57th Place to East Capitol Street; West on East Capitol Street to Division Avenue; North on Division Avenue to Watts Branch Creek.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(ddddd) Description of SMD 7C03 Boundaries

All of the following streets are in the Northeast quadrant. Beginning at Foote Street and 47th Place; East on Foote Street to 48th Place; North on 48th Place to Watts Branch Creek; East on Watts Branch Creek to Nannie Helen Burroughs Parkway; East on Nannie Helen Burroughs Parkway to 49th Place; South on 49th Place to Fitch Place; East on Fitch Place to 51st Street; South on 51st Street to Cloud Place; West on Cloud Place to Division Avenue; South on Division Avenue to East Capitol Street; West on East Capitol Street to 47th Street; North on 47th Street to 47th Place; North on 47th Place to Foote Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 7C04 Boundaries

All of the following streets are in the Northeast quadrant. Beginning at Eastern Avenue and Lee Street; South on Eastern Avenue to Division Avenue; South on Division Avenue to Hayes Street; West on Hayes Street to 50th Place; North on 50th Place to Jay Street; West on Jay Street to 48th Place; South on 48th Place to Hayes Street; West on Hayes Street to

48th Street; South on 48th Street to Nannie Helen Burroughs Avenue; West on Nannie Helen Burroughs Avenue to Minnesota Avenue; North on Minnesota Avenue to Sheriff Road; West on Sheriff Road to 51st Street; North on 51st Street to Lee Street; East on Lee Street to Eastern Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 7C05 Boundaries

All of the following streets are in the northeast quadrant. Beginning at 55th Street and Eads Street; East on Eads Street to Eastern Avenue; South on Eastern Avenue to Southern Avenue; South on Southern Avenue to East Capitol Street; West on East Capitol to 57th Place; North on 57th Place to Blaine Street; West on Blaine Street to 57th Place; North on 57th Place to Clay Place; West on Clay Place to 55th Street; North on 55th Street to Eads Street.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(eeeee) Description of SMD 7C06 Boundaries

All of the following streets are in the Northeast quadrant. Beginning at Eastern Avenue and Division Avenue; South on Eastern Avenue to Eads Street; West on Eads Street to 55th Street; South on 55th Street to Watts Branch Creek; West on Watts Branch Creek to Division Avenue; North on Division Avenue to Eastern Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 7C07 Boundaries

All of the following streets are in the Northeast quadrant. Beginning at Eastern Avenue and Minnesota Avenue; South on Eastern Avenue to Lee Street; West on Lee Street to 51st Street; South on 51st Street to Sheriff Road; West on Sheriff Road to 45th Street; North on 45th Street Minnesota Avenue; Northeast on Minnesota Avenue to Eastern Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(fffff) Description of ANC 7D Boundaries

All streets are located in the Northeast quadrant. Beginning at the intersection of Benning Road and 19th Street; West on Benning Road to the Anacostia River; North along the Anacostia River to the State of Maryland-District of Columbia boundary line; East along the State of Maryland-District of Columbia boundary line to Minnesota Avenue; South on Minnesota Avenue to 45th Street; South on 45th Street to Sheriff Road; East on Sheriff Road to Minnesota Avenue; Southwest on Minnesota Avenue to Nannie Helen Burroughs Avenue; East on Nannie Helen Burroughs Avenue to 44th Street; South on 44th Street to Grant Street; East on Grant Street to 46th Street; South on 46th Street to Foote Street; West on Foote Street to 45th Street; South on 45th Street to Edson Place; East on Edson Place to 47th Place; North on 47th Place to 47th Street; South on

47th Street to East Capitol Street; West on East Capitol Street to 42nd Street; North on 42nd Street to Benning Road; West on Benning Road to 41st Street; South on 41st Street to Blaine Street; West on Blaine Street to 40th Street; North on 40th Street to Benning Road; West on Benning Road to the CSX Railroad tracks; South along the CSX Railroad tracks to East Capitol Street; West along a line extending from the center of East Capitol Street through Robert F. Kennedy Memorial Stadium to East Capitol Street; West on East Capitol Street to 22nd Street; Northwest on 22nd Street to C Street; West on C Street to 19th Street; North on 19th Street to Benning Road.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(ggggg) Description of SMD 7D01 Boundaries

All of the following streets are in the Northeast quadrant. Beginning at Benning Road and 19th Street; East on Benning Road to center of Anacostia River; South along Anacostia River to East Capitol Street; West on East Capitol Street and along a line extending East Capitol Street through RFK Memorial Stadium to 22nd Street; North on 22nd Street to C Street; West on C Street to 19th Street; North on 19th Street to Benning Road.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(hhhhh) Description of SMD 7D02 Boundaries

All of the following streets are in the Northeast quadrant. Beginning at the CSX Railroad tracks and Nannie Helen Burroughs Avenue; West on Nannie Helen Burroughs to Kenilworth Avenue; North on Kenilworth Avenue to a line extending Ord Street to Kenilworth Avenue; West on Ord Street to 44th Street; South on 44th Street to Nash Street; West on Nash Street to Anacostia Avenue; West on Anacostia Avenue to 40th Street; South on 40th Street to Lee Street; South on Lee Street to Kenilworth Avenue; West on Kenilworth Avenue to Jay Street; West on Jay Street to a point opposite the northern property line of Mayfair Mansions Apartments; Southwest along said boundary to Hayes Street; South on Hayes Street and a line extending Hayes Street to the CSX Railroad tracks; North on the CSX Railroad tracks to Nannie Helen Burroughs Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(iiiii) Description of SMD 7D03 Boundaries

All of the following streets are in the Northeast quadrant. Beginning at the intersection of the Anacostia River and Watts Branch Creek; North on Anacostia River to Eastern Avenue; Southeast along Eastern Avenue to Minnesota Avenue; South on Minnesota Avenue to 45th Street; South on 45th Street to Sheriff Road; West on Sheriff Road to Minnesota Avenue; Southwest on Minnesota Avenue to Nannie Helen Burroughs Avenue; Northwest on

Nannie Helen Burroughs Avenue to Kenilworth Avenue; North on Kenilworth Avenue to a line extending Ord Street to Kenilworth Avenue; West on Ord Street to 44th Street; South on 44th Street to Nash Street; West on Nash Street to Anacostia Avenue; West on Anacostia Avenue to 40th Street; South on 40th Street to Lee Street; Southeast on Lee Street to Watts Branch Creek; Northeast on Watts Branch Creek to the Anacostia River.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(jjjj) Description of SMD 7D04 Boundaries

All of the following streets are in the Northeast quadrant. Beginning at Benning Road and the Anacostia River; East on Benning Road to the CSX Railroad tracks; South on the CSX Railroad tracks to East Capitol Street; West on East Capitol Street to the Anacostia River; North on the Anacostia River to Benning Road.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 7D05 Boundaries

All of the following streets are in the Northeast quadrant. Beginning at 44th Street and Grant Street; South on 44th Street to Benning Road; Northwest on Benning Road to Blaine Street; West on Blaine to 42nd Street; South on 42nd Street to East Capitol Street; East on East Capitol Street to 47th Street; North on 47th Street to 47th Place; South on 47th Place to Edson Place; West on Edson Place to 45th Street; North on 45th Street to Foote Street; East on Foote Street to 46th Street; North on 46th Street to Grant Street; West on Grant Street to 44th Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 7D06 Boundaries

All of the following streets are in the Northeast quadrant. Beginning at Benning Road and the CSX Railroad tracks; North on the CSX Railroad to Nannie Helen Burroughs Avenue; South on Nannie Helen Burroughs Avenue to 44th Street; South on 44th Street to Benning Road; Northwest on Benning Road to Blaine Street; West on Blaine to 42nd Street; North on 42nd Street to Benning Road; Northwest on Benning Road to 41st Street; South on 41st and a line extending 41st Street across the park to the intersection of 41st Street and Blaine Street; West on Blaine Street to 40th Street; North on 40th Street to Benning Road; West on Benning Road to the CSX Railroad tracks.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(kkkk) Description of SMD 7D07 Boundaries

All of the following streets are in the Northeast quadrant. Beginning at the middle of the Anacostia River and Benning Road; North on the Anacostia River to Watts Branch Creek; South on Watts Branch Creek to Kenilworth Avenue; South on Kenilworth Avenue to Jay Street; North on Jay Street to a point opposite the northern boundary of Mayfair Mansions

Apartments; Southwest on said boundary to Hayes Street; South on Hayes Street and an extension of Hayes Street to the CSX Railroad tracks; South on the CSX Railroad tracks to Benning Road; West on Benning Road to the Anacostia River.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(llll) Description of ANC 7E Boundaries

All streets are located in the Southeast quadrant. Beginning at the intersection of Texas Avenue and East Capitol Street; East on East Capitol Street to Southern Avenue; Southwest on Southern Avenue to Pennsylvania Avenue; West on Pennsylvania Avenue to 40th Street; North on 40th Street to R Street; West on R Street to Fort Davis Street; East on Fort Davis Street to Q Street; East on Q to Fort Dupont Street; North on Fort Dupont Street to 42nd Street; North on 42nd Street to Massachusetts Avenue; West on Massachusetts Avenue to Fort Davis Drive; North on Fort Davis Drive to Texas Avenue; East on Texas Avenue to Ridge Road; South on Ridge Road to G Street; East on G Street to Benning Road; North on Benning Road to C Street; West on C Street to Texas Avenue; North on Texas Avenue to East Capitol Street.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(mmmm) Description of SMD 7E01 Boundaries

All of the following streets are in the Southeast quadrant. Beginning at Ridge Road and G Street; East on G Street to Alabama Avenue; South on Alabama Avenue to Hilltop Terrace; East on Hilltop Terrace to 46th Street; South on 46th Street to H Street; East on H Street to Southern Avenue; South on Southern Avenue to Reed Terrace; West on Reed Terrace to Alabama Avenue; North on Alabama Avenue to Hillside Road; West on Hillside Road to Chaplin Street; South on Chaplin Street to Ridge Road; North on Ridge Road to G Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 7E02 Boundaries

All of the following streets are in the Southeast quadrant. Beginning at Fort Davis Street and R Street; North on Fort Davis Street to Q Street; South on Q Street to Fort Dupont Street; North on Fort Dupont Street to 42nd Street; North on 42nd Street to Massachusetts Avenue; Northwest on Massachusetts Avenue to Fort Davis Drive; North on Fort Davis Drive to Ridge Road; South on Ridge Road to Chaplin Street; North on Chaplin Street to Hillside Road; East on Hillside Road to Alabama Avenue; South on Alabama Avenue to Reed Terrace; East on Reed Terrace to Southern Avenue; South on Southern Avenue to Pennsylvania Avenue; North on Pennsylvania Avenue to 40th Street; North on 40th Street to R Street; North on R Street to Fort Davis Street.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(nnnnn) Description of SMD 7E03 Boundaries

All of the following streets are in the Southeast quadrant. Beginning at G Street and Alabama Avenue; East on G Street to Benning Road; North on Benning Road to F Street; North on F Street to Queen's Stroll Place; East on Queen's Stroll Place to 51st Street; South on 51st Street to E Street; East on E Street to the District of Columbia boundary; Southwest on the District of Columbia boundary to H Street; West on H Street to 46th Street; North on 46th Street to Hilltop Terrace; West on Hilltop Terrace to Alabama Avenue; North on Alabama Avenue to G Street.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(ooooo) Description of SMD 7E04 Boundaries

All of the following streets are in the Southeast quadrant. Beginning at Texas Avenue and East Capitol Street; East on East Capitol Street to 49th Street; South on 49th Street to Saint Louis Street; South on Saint Louis Street to F Street; South on F Street to Benning Road; North on Benning Road to C Street; West on C Street to Texas Avenue; North on Texas Avenue to East Capitol Street.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(ppppp) Description of SMD 7E05 Boundaries

All of the following streets are in the Southeast quadrant. Beginning at East Capitol Street and 49th Street; East on East Capitol to 52nd Street; South on 52nd Street to Central Avenue; Northwest on Central Avenue to 51st Street; South on 51st Street to C Street; East on C Street to 53rd Street; South on 53rd Street to E Street; West on E Street to 51st Street; North on 51st Street to Drake Place; West on Drake Place to Saint Louis Street; Northwest on Saint Louis Street to 49th Street; North on 49th Street to East Capitol Street.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(qqqqq) Description of SMD 7E06 Boundaries

All of the following streets are in the Southeast quadrant. Beginning at 51st and Central Avenue; Southeast on Central Avenue to 52nd Street; North on 52nd Street to East Capitol Street; East on East Capitol Street to 53rd Street; South on 53rd Street to Central Avenue; Southeast on Central Avenue to Southern Avenue; South on Southern Avenue to E Street; West on E Street to 53rd Street; North on 53rd Street to C Street; West on C Street to 51st Street; North on 51st Street to Central Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(rrrrr) Description of SMD 7E07 Boundaries

All of the following streets are in the Southeast quadrant. Beginning at East Capitol Street and 53rd Street; East on East Capitol to

Southern Avenue; South on Southern Avenue to Central Avenue; Northwest on Central Avenue to 53rd Street; North on 53rd Street to East Capitol Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of ANC 8A Boundaries

All of the following streets in the Southeast quadrant unless otherwise designated. Beginning at the center line of Anacostia River and the Officer Kevin J. Welsh Memorial Bridge; Southeasterly along said Bridge to Railroad Avenue; Southwesterly on Railroad Avenue to Talbert Street; Southeasterly on Talbert Street to Talbert Terrace; Southwesterly on Talbert Terrace to Howard Road; Southeasterly on Howard Road to Bowen Road; Southwesterly on Bowen Road to Sheridan Road; South on Sheridan Road to Suitland Parkway; South on Suitland Parkway to Stanton Road; North on Stanton Road to Sheridan Road; North on Sheridan Road to 15th Place; North on 15th Place to Gainsville Road; East on Gainsville Road to 16th Street; North on 16th Street to Erie Road; North from that point along an imaginary line across Fort Stanton Park to 22nd Street and Good Hope Road; West on Good Hope Road to Minnesota Avenue; Northeast on Minnesota Avenue to S Street; East on S Street to 25th Street; North on 25th Street to Pennsylvania Avenue; Northwest on Pennsylvania Avenue to the center of the Anacostia River; Southwest on the center line of the Anacostia River to the Officer Kevin J. Welsh Memorial Bridge.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(sssss) Description of SMD 8A01 Boundaries

All of the following streets are in the Southeast quadrant unless otherwise designated. Beginning at the intersection of Pennsylvania Avenue and the Anacostia River; East on Pennsylvania Avenue to 25th Street; South on 25th Street to S Street; West on S Street to 18th Street; Southeast on 18th Street to Minnesota Avenue; Northeast on Minnesota Avenue to 19th Street; North on 19th Street to Naylor Road; Northwest on Naylor Road and a line extending Naylor Road to the Anacostia; Northeast on the Anacostia River to Pennsylvania Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(ttttt) Description of SMD 8A02 Boundaries

All of the following streets are in the Southeast quadrant unless otherwise designated. Beginning at the center line of the Anacostia River and a line extending Naylor Road to the Anacostia River; Southeasterly along Naylor Road to 19th Street; South on 19th Street to Minnesota Avenue; Southwesterly on Minnesota Avenue to 18th Street; South on 18th Street to S Street; West on S Street to Minnesota Avenue; Southeasterly on Minnesota Ave-

nue to 16th Street; North on 16th Street to S Street; West on S Street to 14th Street; North on 14th Street to Ridge Place; West on Ridge Place to 13th Street; Northwesterly on 13th Street to the center line of the Anacostia River; Northeast on the Anacostia River to the point of beginning.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(uuuuu) Description of SMD 8A03 Boundaries

All of the following streets are in the Southeast quadrant unless otherwise designated. Beginning at the center line of the Anacostia River and the 11th Street Bridge; Southeasterly along the 11th Street Bridge to Ridge Place; East on Ridge Place to 14th Street; South on 14th Street to S Street; East on S Street to 16th Street; South on 16th Street to Minnesota Avenue; Southwesterly on Minnesota Avenue to Good Hope Road; Southeasterly on Good Hope Road to 15th Street; South on 15th Street to U Street; East on U Street to 16th Street; South on 16th Street to W Street; West on W Street to 13th Street; South on 13th Street to Pleasant Street; West on Pleasant Street to Valley Place; Southeasterly on Valley Place to High Street; Northeast on High Street to Cedar Street; Southwesterly on Cedar Street to the alleyway parallel to 1425 Cedar Street; Southwest on said alley to Bangor Street; Southwest on Bangor Street to Morris Road; Northwesterly on Morris Road to Martin Luther King Jr. Boulevard; Northeast on Martin Luther King Jr. Boulevard to Chicago Street; Northwesterly on Chicago Street and a line extending Chicago Street to the CSX railroad tracks; Northeasterly on the railroad tracks to Officer Kevin J. Welsh Memorial Bridge; North on the Officer Kevin J. Welsh Memorial Bridge to the center line of the Anacostia River; Northeast on the Anacostia River to the 11th Street Bridge.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(vvvvv) Description of SMD 8A04 Boundaries

All of the following streets are in the Southeast quadrant unless otherwise designated. Beginning at the intersection of 15th Street and Good Hope Road; East on Good Hope Road to 22nd Street; Southwesterly on 22nd Street and along an imaginary line through Fort Stanton Park to the intersection of 16th and Erie Streets; West on Erie Street to Morris Road; Northeast on Morris Road to Pitts Place; Northeasterly on Pitts Place to Bangor Street; East on Bangor Street to 16th Street; North on 16th Street to U Street; West on U Street to 15th Street; North on 15th Street to Good Hope Road.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 8A05 Boundaries

All of the following streets are in the Southeast quadrant unless otherwise designated. Beginning at the intersection of 13th Street and W

Street; Easterly on W Street to 16th Street; South on 16th Street to Bangor Street; West on Bangor Street to Pitts Place; South on Pitts Place to Morris Road; Southeasterly on Morris Road to Hunter Place; Southwesterly on Hunter Place to Howard Road; Northwesterly on Howard Road to Talbert Terrace; Northeasterly on Talbert Street and a line extending Talbert Street to the CSX railroad tracks; Northeasterly on the railroad tracks to Chicago Street; Southeasterly on Chicago Street Martin Luther King Jr. Boulevard; Southwest on Martin Luther King Jr. Boulevard to Morris Road; Southeasterly on Morris Road to Bangor Street; Northeasterly on Bangor Street to an alleyway running parallel to 1425 Cedar Street; Northeast on said alleyway to Cedar Street; Northwesterly on Cedar Street to High Street; Southwesterly on High Street to Valley Place; Northwesterly on Valley Place to Pleasant Street; East on Pleasant Street to 13th Street; North on 13th Street to W Street.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(wwwww) Description of SMD 8A06 Boundaries

All of the following streets are in the Southeast quadrant unless otherwise designated. Beginning at the intersection of Bowen Road and Howard Road; Southeasterly on Howard Road to Bryan Place; Southwesterly on Bryan Place to Stanton Road; Southerly on Stanton Road to Pomeroy Road; South and West on Pomeroy Road to Sheridan Road; North on Sheridan Road to Bowen Road; North on Bowen Road to Howard Road.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 8A07 Boundaries

All of the following streets are in the Southeast quadrant unless otherwise designated. Beginning at the intersection of Hunter Place and Morris Road; Southeasterly on Morris Road to 16th Street; South on 16th Street to Gainesville Street; West on Gainesville Street to 15th Place; South on 15th Place to Sheridan Road; Southwest on Sheridan Road to Stanton Road; Southeasterly on Stanton Road to Suitland Parkway; West on Suitland Parkway to Martin Luther King Jr. Boulevard; North on Martin Luther King Jr. Boulevard to Sheridan Road; South on Sheridan Road to Pomeroy Road; East on Pomeroy Road to Stanton Road; Northwesterly on Stanton Road to Bryan Place; Northeasterly on Bryan Place to Howard Road; Southeasterly on Howard Road to Hunter Place; Northeasterly on Hunter Place to Morris Road.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(xxxxx) Description of ANC 8B Boundaries

All of the following streets are in the Southeast quadrant unless otherwise designated. Beginning on Naylor Road at the District of Columbia-Maryland boundary; Southwest on the

District of Columbia-Maryland boundary to Valley Avenue; West on Valley Avenue to an imaginary line extending 15th Street through Oxon Run Park to the intersection of Mississippi Avenue and 15th Street; North on said line and 15th Street to Alabama Avenue; East on Alabama Avenue to 15th Place; North on 15th Place to Congress Place; East on Congress Place to Stanton Road; North on Stanton Road to Sheridan Road; North on Sheridan Road to 15th Place; North on 15th Place to Gainesville Road; East on Gainesville Road to 16th Street; North on 16th Street to Erie Road; North along an imaginary line across Fort Stanton Park to 22nd Street and Good Hope Road; East on Good Hope Road to Altamont Place; Northeast on Altamont Place to Naylor Road; South on Naylor Road to the District of Columbia-Maryland boundary.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 8B01 Boundaries

All of the following streets are in the Southeast quadrant unless otherwise designated. Beginning at the intersection of Alamont Place and Naylor Road; Southerly on Naylor Road to 28th Street; South on 28th Street to Gainesville Street; West on Gainesville Street to Alabama Avenue; North on Alabama Avenue to Ainger Place; Northwesterly on Ainger Place to Bruce Place; Southwesterly on Bruce Place to Fort Place; West on Fort Place to Erie Street; West on Erie Street to Morris Road; West on Morris Road to 16th Street; Northeastly along an imaginary line through Fort Stanton Park to Good Hope Road and 22nd Street; East on Good Hope Road to Alamont Place; North on Alamont Place to Naylor Road.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(yyyyy) Description of SMD 8B02 Boundaries

All of the following streets are in the Southeast quadrant unless otherwise designated. Beginning at the intersection of 28th Street and Naylor Road; Southeastly on Naylor Road to the District of Columbia-Maryland boundary; Southwest on the District of Columbia-Maryland boundary to 30th Street; North on 30th Street to Buena Vista Terrace; South on Buena Vista Terrace to Ridgcrest Court; West on Ridgcrest Court to 28th Street; North on 28th Street to Jasper Street; West on Jasper Street to Alabama Avenue; North on Alabama Avenue to Gainesville Street; East on Gainesville Street to 28th Street; North on 28th Street to Naylor Road.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(zzzzz) Description of SMD 8B03 Boundaries

All of the following streets are in the Southeast quadrant unless otherwise designated. Beginning at the intersection of Ainger Place and Alabama Avenue; South on Alabama Avenue to Knox Place; Southeastly on Knox Place to

24th Place; South on 24th Place to Irving Street; West on Irving Street to 23rd Street; North on 23rd Street to Hartford Street; West on Hartford Street to 22nd Street; South on 22nd Street to the entrance ramp for westbound Suitland Parkway; Northeastly on the end of the entrance ramp for westbound Suitland Parkway via imaginary line along Federal property to Bruce Place; Northeastly on Bruce Place to Ainger Place; Southeast on Ainger Place to Alabama Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(aaaaaa) Description of SMD 8B04 Boundaries

All of the following streets are in the Southeast quadrant unless otherwise designated. Beginning at the intersection of Erie Street and 16th Street; East on Erie Street to Fort Place; Southeast on Fort Place to Bruce Place; South on Bruce Place to the Federal property boundary line; South on the Federal property boundary line to the entrance ramp for the westbound Suitland Parkway; Southeastly on the entrance ramp for westbound Suitland Parkway to 22nd Street; North on 22nd Street to Hartford Street; East on Hartford Street to 23rd Street; South on 23rd Street to Irving Street; East on Irving Street to 24th Place; North on 24th Place to Knox Place; Northeastly on Knox Place to Alabama Avenue; South on Alabama Avenue to Jasper Street; East on Jasper Street to 28th Street; South on 28th Street to Shipley Terrace; East on Shipley Terrace to Buena Vista Terrace; North on Buena Vista Terrace to 30th Street; South on 30th Street to the District of Columbia-Maryland boundary; Southwest on the District of Columbia-Maryland boundary to Suitland Parkway; Northwesterly on Suitland Parkway to Alabama Avenue; Southwesterly on Alabama Avenue to Stanton Terrace; Northwest on Stanton Terrace to Bruce Place; West on Bruce Place to Stanton Road; Northwesterly on Stanton Road to Sheridan Road; East on Sheridan Road to 15th Place; North on 15th Place to Gainesville Street; East on Gainesville Street to 16th Street.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(bbbbbb) Description of SMD 8B05 Boundaries

All of the following streets are in the Southeast quadrant unless otherwise designated. Beginning at the intersection of Suitland Parkway and Alabama Avenue; Southeastly on Suitland Parkway to Southern Avenue; Southwesterly on Southern Avenue to Savannah Street; West on Savannah Street to 18th Street; North on 18th Street to Alabama Avenue; Northeastly on Alabama Avenue to Suitland Parkway.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 8B06 Boundaries

All of the following streets are in the Southeast quadrant unless otherwise designated. Be-

ginning at the intersection of 21st Street and Savannah Street; East on Savannah Street to Southern Avenue; Southwesterly on Southern Avenue to Mississippi Avenue; West on Mississippi Avenue to 21st Street; North on 21st Street to Savannah Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 8B07 Boundaries

All of the following streets are in the Southeast quadrant unless otherwise designated. Beginning at the intersection of Stanton Road and Bruce Place; East on Bruce Place to Stanton Terrace; South on Stanton Terrace to Alabama Avenue; Southwesterly on Alabama Avenue to 18th Street; East on 18th Street to Savannah Street; East on Savannah Street to 21st Street; South on 21st Street to Mississippi Avenue; East on Mississippi Avenue to the District of Columbia-Maryland boundary; Southwest on the District of Columbia-Maryland boundary to Oxon Run; West on Oxon Run to a line extending 15th Street through Oxon Run Park from the intersection of Mississippi Avenue and 15th Street; North on said line, continuing on 15th Street to Alabama Avenue; East on Alabama Avenue to 15th Place; North on 15th Place to Congress Place; East on Congress Place to Stanton Road; North on Stanton Road to Bruce Place.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(cccccc) Description of ANC 8C Boundaries

All of the following streets are in the Southeast quadrant unless otherwise designated. Beginning at the centerline of Anacostia River and the Officer Kevin J. Welsh Memorial Bridge; Southeasterly along the Officer Kevin J. Welsh Memorial Bridge to Railroad Avenue; Southwesterly on Railroad Avenue to Talbert Street; Southeasterly on Talbert Street to Talbert Terrace; Southwesterly on Talbert Terrace to Howard Road; Southeasterly on Howard Road to Bowen Road; Southwesterly on Bowen Road to Sheridan Road; South on Sheridan Road to Suitland Parkway; South on Suitland Parkway to its point of closest approach to the Saint Elizabeth's northern boundary; Southwest from said point to the point on the northern boundary of Saint Elizabeth's closest to Suitland Parkway; Southeasterly and then Southwesterly on the northern and eastern boundaries of Saint Elizabeth's Hospital to the mid-point of the 1200 block of Alabama Avenue; West on Alabama Avenue to 5th Street; South on 5th Street to Trenton Street; East on Trenton Street to 6th Street; South on 6th Street to Mississippi Avenue; Southwest on Mississippi to 4th Street; South on 4th Street to Oxon Run; Southwest on Oxon Run to Atlantic Avenue; West on Atlantic Avenue to South Capitol Street; North on South Capitol Street to Overlook Drive, S.W.; South on Overlook Drive, S.W. to a line extending Angell Street, S.W. east to

Overlook Drive; West on said line and Angell Street, S.W. to Defense Boulevard, S.W.; South on Defense Boulevard, S.W. to its southern intersection with McGuire Avenue, S.W.; West on McGuire Avenue, S.W. and a line extending McGuire Avenue across the Potomac River to the District of Columbia-Commonwealth of Virginia boundary; North on the District of Columbia-Commonwealth of Virginia boundary to the intersection of said boundary and an extension of the centerline of the Anacostia River; Northeast on the centerline of the Anacostia River to the Officer Kevin J. Welsh Memorial Bridge.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(dddddd) Description of SMD 8C01 Boundaries

All of the following streets are in the Southeast quadrant unless otherwise designated. Beginning at the centerline of Anacostia River and the Officer Kevin J. Welsh Memorial Bridge; Southeasterly along the Officer Kevin J. Welsh Memorial Bridge to Railroad Avenue; Southwesterly on Railroad Avenue to Talbert Street; Southeasterly on Talbert Street to Talbert Terrace; Southwesterly on Talbert Terrace to Howard Road; Southeasterly on Howard Road to Bowen Road; Southwesterly on Bowen Road to Sheridan Road; Northwesterly on Sheridan Road to Martin Luther King, Jr. Avenue; South on Martin Luther King, Jr. Avenue to Sumner Road; West on Sumner Road to Wade Road; Southwesterly on Wade Road to the boundary of Saint Elizabeth's Hospital (West Campus); Northwesterly along the boundary of Saint Elizabeth's Hospital (West Campus) to South Capitol Street; South on South Capitol Street to the boundary between the U.S. Air Station and Bolling Air Force Base; West on said boundary and an extension of said boundary to the Virginia Shore of the Potomac River; North on the Virginia Shore of the Potomac River to an extension of the centerline of the Anacostia River; Northeast on the centerline of the Anacostia River to the Officer Kevin J. Welsh Memorial Bridge.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(eeeeeee) Description of SMD 8C02 Boundaries

All of the following streets are in the Southeast quadrant unless otherwise designated. Beginning at the boundary of Saint Elizabeth's Hospital (West Campus) and Firth Sterling Avenue; Southeasterly on the boundary of Saint Elizabeth's Hospital (West Campus) to Wade Road; Northeasterly on Wade Road to Sumner Road; Southeasterly on Sumner Road to Martin Luther King, Jr. Avenue; South on Martin Luther King, Jr. Avenue to Malcolm X Avenue; West on Malcolm X Avenue to Newcomb Street; Northwesterly on Newcomb Street to 5th Street; Southwesterly on 5th Street to Oakwood Street; Northwesterly on Oakwood Street to 2nd Street; North on 2nd Street to

Newcomb Street; Southeasterly on Newcomb Street to 4th Street; North on 4th Street to Lebaum Street; Northeasterly on Lebaum Street to mid-point of 400 Block of Lebaum Street; Northeasterly on mid-point of 400 Block of Lebaum Street to the southern boundary of Saint Elizabeth's Hospital (West Campus); Northwesternly on the southern boundary of Saint Elizabeth's Hospital (West Campus) to South Capitol Street; South on South Capitol Street to the boundary between the U.S. Air Station and Bolling Air Force Base; West on said boundary and an extension of said boundary to the Virginia Shore of the Potomac River; North on the Virginia Shore of the Potomac and the centerline of the Anacostia River to South Capitol Street; South on South Capitol Street to the northwest boundary of Saint Elizabeth's Hospital (West Campus); Southeast on the northwest boundary of Saint Elizabeth's Hospital (West Campus) to Firth Sterling Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(f) Description of SMD 8C03 Boundaries

All of the following streets are in the Southeast quadrant unless otherwise designated. Beginning at the intersection of Suitland Parkway and Martin Luther King, Jr. Avenue; South on Suitland Parkway to the point closest to northern boundary of Saint Elizabeth's Hospital; Southwesterly from said point closest to northern boundary of Saint Elizabeth's Hospital to the point on the northern boundary of Saint Elizabeth's Hospital closest to Suitland Parkway; Southeasterly and then southwesterly (along border) on the northern boundary of Saint Elizabeth's Hospital to intersection of mid-point of 1200 block of Alabama Avenue; Southwesterly on the mid-point of 1200 block of Alabama Avenue to 5th Street; South on 5th Street to Savannah Street; West on Savannah Street to Martin Luther King, Jr. Avenue; Northeasterly on Martin Luther King, Jr. Avenue to Highview Place; Westerly on Highview Place to Brothers Place; North on Brothers Place to Waclark Place; North on Waclark Place to point of intersection with Malcolm X Avenue; East on Malcolm X Avenue to Oakwood Street; Northwesternly on Oakwood Street to 5th Street; North on 5th Street to Newcomb Street; Southeasterly on Newcomb Street to Malcolm X Avenue; East on Malcolm X Avenue to Martin Luther King, Jr. Avenue; North on Martin Luther King, Jr. Avenue to the Suitland Parkway.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 8C04 Boundaries

All of the following streets are in the Southeast quadrant unless otherwise designated: Beginning at the Interstate 295 and the southern boundary of Saint Elizabeth's Hospital (West Campus); Southeasterly along the southern boundary of Saint Elizabeth's Hospital (West Campus) to a mid point of 400 block of Lebaum

Street; Northwesternly on the mid-point of 400 block of Lebaum Street to 4th Street; South on 4th Street to Newcomb Street; Northwesternly on Newcomb Street to 2nd Street (around loop); South on 2nd Street to Oakwood Street; Southeasterly on Oakwood Street to Malcolm X Avenue; West on Malcolm X Avenue to Waclark Place; South on Waclark Place to Brothers Place; Southwesterly on Brothers Place to Highview Place; Southeasterly on Highview Place to Martin Luther King, Jr. Avenue; Southwesterly on Martin Luther King, Jr. Avenue to Savannah Street; East on Savannah Street to 5th Street; South on 5th Street to Trenton Street; East on Trenton Street to 6th Street; South on 6th Street to Mississippi Avenue; Southwesterly on Mississippi Avenue to 4th Street (behind Ballou High School); Northwesternly on 4th Street (behind Ballou High School) to Upsal Street; West on Upsal Street to Martin Luther King, Jr. Avenue; Southwesterly on Martin Luther King, Jr. Avenue to South Capitol Street; North on South Capitol Street to intersection of Malcolm X Avenue and MacDill Boulevard (Bolling AFB Main Gate); West on MacDill Boulevard to Defense Boulevard; North on Defense Boulevard to North Service Drive, S.W. (Bolling AFB); East on North Service Drive, S.W. (Bolling AFB) to Interstate 295; North on Interstate 295 to the southern boundary of Saint Elizabeth's Hospital (West Campus).

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 8C05 Boundaries

All of the following streets are in the Southwest quadrant unless otherwise designated: Beginning at the Commonwealth of Virginia shore of the Potomac River and the extension of North Service Drive. (Bolling AFB); East on North Service Drive to Defense Boulevard (Bolling AFB); South on Defense Boulevard (Bolling AFB) to MacDill Boulevard (Bolling AFB); East on MacDill Boulevard (Bolling AFB) to South Capitol Street; South on South Capitol Street to Overlook Avenue; South on Overlook Avenue to Tinker Street (Bolling AFB); West on Tinker Street (Bolling AFB) and on the extension of Tinker Street to the Commonwealth of Virginia shore of the Potomac River; North on Commonwealth of Virginia shore of the Potomac River to its intersection with the extension of North Service Drive, S.E. (Bolling AFB).

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 8C06 Boundaries

All of the following streets are in the Southwest quadrant unless otherwise designated. Beginning at the intersection of the Virginia Shore of the Potomac River and extension of Tinker Street; East on Tinker Street (Bolling AFB) to Overlook Avenue; South on Overlook Avenue to extension of Angell Street (Bolling AFB); West on the extension of Angell Street and Angell Street to Defense Boulevard

(Bolling AFB); South on Defense Boulevard to McGuire Avenue (Bolling AFB); West on McGuire to the extension of McGuire Avenue and the Virginia Shore of the Potomac River; North on the Virginia Shore of the Potomac River to the intersection of the Virginia Shore of the Potomac River and the extension of Tinker Street (Bolling AFB).

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(gggggg) Description of SMD 8C07 Boundaries

All of the following streets are in the Southeast quadrant unless otherwise designated. Beginning at the intersection of Upsal Street and Martin Luther King, Jr. Avenue; East on Upsal Street to 4th Street; South on 4th Street to Oxon Run; Southwesterly on Oxon Run to Atlantic Street; West on Atlantic Street to South Capitol Street; North on South Capitol Street to Martin Luther King, Jr. Avenue; North on Martin Luther King, Jr. Avenue to Upsal Street.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(hhhhhh) Description of ANC 8D Boundaries

All of the following streets are in the Southeast quadrant unless otherwise designated. Beginning at Chesapeake Street and the District of Columbia-Maryland boundary; West on Chesapeake to Barnaby Street; North on Barnaby to Atlantic Avenue; West on Atlantic Avenue to South Capitol Street; North on South Capitol Street to Overlook Drive, S.W.; South on Overlook Drive, S.W. to a line extending Angell Street, S.W. east to Overlook Drive; West on said line and Angell Street, S.W. to Defense Boulevard, S.W.; South on Defense Boulevard, S.W. to McGuire Avenue, S.W.; West on McGuire Avenue, S.W. and a line extending McGuire Avenue to the District of Columbia-Virginia boundary; South on the District of Columbia-Virginia boundary to the District of Columbia-Maryland-Virginia boundary; Northeast on the District of Columbia-Maryland boundary to Chesapeake Street.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(iiiiii) Description of SMD 8D01 Boundaries

All of the following streets are in the Southeast quadrant unless otherwise designated. Beginning at the intersection of Atlantic Street and 6th Street; East on Atlantic Street to Barnaby Street; Southwesterly on Barnaby Street to Chesapeake Street; East on Chesapeake Street to Southern Avenue; Southwesterly on Southern Avenue to Bonini Road; West on Bonini Road to Barnaby Road; Northeast on Barnaby Road to 7th Street; North on 7th Street to Chesapeake Street; West on Chesapeake Street to 6th Street; North on 6th Street to Atlantic Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 8D02 Boundaries

All of the following streets are in the Southeast quadrant unless otherwise designated. Beginning at the intersection of 4th Street and Atlantic Street; East on Atlantic Street to 6th Street; South on 6th Street to Chesapeake Street; East on Chesapeake Street to 7th Street; South on 7th Street to Barnaby Road; Southeasterly on Barnaby Road to Bonini road; East on Bonini Road to Southern Avenue; Southwesterly on Southern Avenue to South Capitol Street; Northwesterly on South Capitol Street to Livingston Road; North on Livingston Road to 3rd Street; North on 3rd Street to Livingston Terrace; Northeasterly on Livingston Terrace to 4th Street; North on 4th Street to Atlantic Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 8D03 Boundaries

All of the following streets are in the Southeast quadrant unless otherwise designated. Beginning at the intersection of 1st Street and Atlantic Street; East on Atlantic Street to 4th Street; South on 4th Street to Livingston Terrace; Southwesterly on Livingston Terrace to 3rd Street; South on 3rd Street to Livingston Road; South on Livingston Road to South Capitol Street; South on South Capitol Street to Southern Avenue, S.W.; Southwesterly on Southern Avenue, S.W. and along the District of Columbia boundary with Prince George's County, Maryland to the end of Oxon Run Park; North on an imaginary line with 1st Street, S.W. to 1st Street, S.E.; North on 1st Street to Atlantic Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 8D04 Boundaries

All of the following streets are in the Southwest quadrant unless otherwise designated. Beginning at the Commonwealth of Virginia shore of the Potomac River at its intersection with a line extending the northern boundary of WASA (5000 Overlook Avenue); East on said extension and the northern boundary of WASA to Overlook Avenue; North on Overlook Avenue to the centerline of artificial extension of Galveston Street; East on the centerline of artificial extension of Galveston Street to Martin Luther King, Jr. Avenue; South on Martin Luther King, Jr. Avenue to Joliet Street; East on Joliet Street to South Capitol Terrace; North on South Capitol Terrace to Galveston Street; West on Galveston Street to Martin Luther King, Jr. Avenue; North on Martin Luther King, Jr. Avenue to Elmira Street; East on Elmira Street to South Capitol Street; South on South Capitol Street to 1st Street; South on 1st Street and an imaginary line extending 1st Street to the District of Columbia-Maryland boundary; Southwesterly on the District of Columbia-Maryland boundary to the Commonwealth of Virginia shore of the Potomac River; North on the Virginia shore of the Potomac River to the point of beginning.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(iiiiii) Description of SMD 8D05 Boundaries

All of the following streets are in the Southwest quadrant unless otherwise designated; Beginning at the intersection of Martin Luther King, Jr. Avenue and Galveston Street; East on Galveston Street to South Capitol Terrace; South on South Capitol Terrace to Joliet Street; West on Joliet Street to Martin Luther King, Jr. Avenue; North on Martin Luther King, Jr. Avenue to Galveston Street.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(kkkkkk) Description of SMD 8D06 Boundaries

All of the following streets are in the Southwest quadrant unless otherwise designated. Beginning at the Commonwealth of Virginia shore of the Potomac River at its intersection with a line extending McGuire Avenue to across the Potomac; East on said extension and on McGuire Avenue to Overlook Avenue; Southwesterly on Overlook Avenue to Chesapeake Street; East on Chesapeake Street to South Capitol Street, S.E.; South on South Capitol Street, S.E. to Danbury Street, S.E.; East on Danbury Street, S.E. to 1st Street, S.E.; South on 1st Street, S.E. to South Capitol Street; North on South Capitol Street to Elmira Street; West on Elmira Street to Martin Luther King, Jr. Avenue; South on Martin Luther King, Jr. Avenue to Galveston Street; West on Galveston Street to an artificial line to Overlook Avenue; South on Overlook Avenue to the northern boundary of WASA (5000 Overlook Avenue); West on the northern boundary of WASA (5000 Overlook Avenue) to the Commonwealth of Virginia shore of the Potomac River; North on the Commonwealth of Virginia shore of the Potomac River to the point of beginning.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 8D07 Boundaries

All of the following streets are in the Southwest quadrant unless otherwise designated. Beginning at the intersection of South Capitol Street and Overlook Avenue; Southeasterly on South Capitol Street to Atlantic Street, S.E.; East on Atlantic Street, S.E. to 1st Street, S.E.; South on 1st Street, S.E. to Danbury Street, S.E.; West on Danbury Street, S.E. to South Capitol Street; North on South Capitol Street to Chesapeake Street; West on Chesapeake Street to Overlook Avenue; North on Overlook Avenue to a line extending McGuire Avenue east; East on said line and McGuire Avenue to Defense Boulevard; North on Defense Boulevard to Angell Street; East on Angell and a line extending Angell Street to Overlook Avenue; North on Overlook Avenue to South Capitol Street.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(lilili) Description of ANC 8E Boundaries

All of the following streets are in the Southwest quadrant unless otherwise designated. Beginning at the District of Columbia-Maryland boundary at Valley Avenue; West on Valley Avenue to imaginary extension line of 15th Street, and continuing on imaginary line of 15th Street through Oxon Run Park to Mississippi Avenue and 15th Street; North on 15th Street to Alabama Avenue; West on Alabama Avenue to Congress Place; Northeasterly on Congress Place to 15th Place; South on 15th Place to Alabama Avenue; East on Alabama Avenue to Stanton Road; North on Stanton Road to Suitland Parkway; Northwest on Suitland Parkway to its point of closest approach to Saint Elizabeth's Hospital's northern boundary; Southwest from said point to the point on the northern boundary of Saint Elizabeth's Hospital closest to Suitland Parkway; Southeasterly and then Southwesterly on the northern and eastern boundaries of Saint Elizabeth's Hospital to the intersection of mid-point of 1200 block of Alabama Avenue; West on Alabama Avenue to 5th Street; South on 5th Street to Trenton Street; East on Trenton Street to 6th Street, South on 6th Street to Mississippi Avenue; Southwest on Mississippi to 4th Street; South on 4th Street to Oxon Run; Southwest on Oxon Run to Atlantic Avenue; East on Atlantic Avenue to Barnaby Street; Southwest on Barnaby Street to Chesapeake Street; East on Chesapeake Street to the District of Columbia-Maryland boundary; Northeast on the District of Columbia-Maryland boundary to Valley Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(mmmmm) Description of SMD 8E01 Boundaries

All of the following streets are in the Southeast quadrant unless otherwise designated. Beginning at the intersection of Suitland Parkway and Stanton Road; South on Stanton Road to Alabama Avenue; West on Alabama Avenue to 15th Place; North on 15th Place to Robinson Street; Northwesterly on Robinson Street to Bruce Street; Northeasterly on Bruce Street to a line extending Jasper Road; Northwest on said line to 12th Place; Southeasterly on 12th Place to boundary of Saint Elizabeth's Hospital grounds; Northwesterly on the boundary of Saint Elizabeth's Hospital grounds to the point closest to Suitland Parkway; Northeast to the point on Suitland Parkway closest to the boundary of Saint Elizabeth's; East on Suitland Parkway to Stanton Road.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(nnnnnn) Description of SMD 8E02 Boundaries

All of the following streets are in the Southeast quadrant unless otherwise designated. Beginning at the intersection of Robinson Place and the boundary of Saint Elizabeth's Hospital grounds; Southeasterly and then Southwest-

erly on the boundary of Saint Elizabeth's Hospital grounds to Alabama Avenue; East on Alabama Avenue to 13th Street; South on 13th Street to Savannah Place; West on Savannah Place to 12th Place; South on 12th Place to Savannah Street; West on Savannah Street to 11th Place; South on 11th Place to Congress Street; East on Congress Street to Savannah Place; Southeasterly on Savannah Place to 14th Place; North on 14th Place to Savannah Street; East on Savannah Street to 15th Street; North on 15th Street to Alabama Avenue; East on Alabama Avenue to 15th Place; North on 15th Place to Robinson Street; West on Robinson Street to Bruce Street; Northeast on Bruce Street to a line extending Jasper Road; West on said line and Jasper Road to 12th Place; Southwesterly on 12th Place to the boundary of Saint Elizabeth's grounds.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(oooooo) Description of SMD 8E03 Boundaries

All of the following streets are in the Southeast quadrant unless otherwise designated. Beginning at the intersection of Congress Street and 13th Place; East on Congress Place to Savannah Place; Southeasterly on Savannah Place to 14th Place; North on 14th Place to Savannah Street; East on Savannah Street to 15th Street; South on 15th Street to Mississippi Avenue; South along a line extending 15th Street to Oxon Run; East on Oxon Run to Southern Avenue; Southwesterly on Southern Avenue to 12th Street; North on 12th Street to Bellevue Street; Northeasterly on Bellevue Street to 13th Street; North on 13th Street to Congress Street; East on Congress Street to 13th Place.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(pppppp) Description of SMD 8E04 Boundaries

All of the following streets are in the Southeast quadrant unless otherwise designated. Beginning at the intersection of Wheeler Road and Savannah Street; East on Savannah Street to 11th Place; South on 11th Place to Congress Street; East on Congress Street to 13th Street; South on 13th Street to Bellevue Street; Southwesterly on Bellevue Street to 12th Street; South on 12th Street to Southern Avenue; Southwesterly on Southern Avenue to Wheeler Road; North on Wheeler Road to Savannah Street.

May 10, 2002, D.C. Law 14-133, § 2(a) Description of SMD 8E05 Boundaries

All of the following streets are in the Southeast quadrant unless otherwise designated. Beginning at the intersection of 5th Street and Alabama Avenue; East on Alabama Avenue to 13th Street; South on 13th Street to Savannah Place; West on Savannah Place to 12th Place; South on 12th Place to Savannah Street; West on Savannah Street to Wheeler Road; South on

Wheeler Road to Congress Street; Southwest on Congress Street to 7th Street; South on 7th Street to Mississippi Avenue; West on Mississippi Avenue to 6th Street; North on 6th Street to Trenton Street; West on Trenton Street to 5th Street; North on 5th Street to Alabama Avenue.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(qqqqqq) Description of SMD 8E06 Boundaries

All of the following streets are in the Southeast quadrant unless otherwise designated. Beginning at the intersection of Congress Street and Wheeler Road; South on Wheeler Road to Barnaby Street; Southwesterly on Barnaby Street to 9th Street; Northwesterly on 9th Street to Xenia Street; West on Xenia Street to 8th Street; North on 8th Street to Condon Terrace; Southwesterly on Condon Terrace to Atlantic Street; West on Atlantic Street to 4th Street; North on 4th Street to Mississippi Avenue; Northeasterly on Mississippi Avenue to 7th Street; North on 7th Street to Upsal Street; East on Upsal Street to Congress Street; Northeasterly on Congress Street to Wheeler Road.

May 10, 2002, D.C. Law 14-133, § 2(a); Oct. 19, 2002, D.C. Law 14-213, § 2(rrrrrr) Description of SMD 8E07 Boundaries

All of the following streets are in the Southeast quadrant unless otherwise designated. Beginning at the intersection of Condon Terrace and 8th Street; Southeasterly on 8th Street to Xenia Street; East on Xenia Street to 9th Street; South on 9th Street to Barnaby Street; Northeasterly on Barnaby Street to Wheeler Road; Southeasterly on Wheeler Road to Southern Avenue; Southwesterly on Southern Avenue to Chesapeake Street; West on Chesapeake Street to Barnaby Street; Northeasterly on Barnaby Street to Atlantic Street; West on Atlantic Street to 4th Street; North on 4th Street to Condon Terrace; Northeasterly on Condon Terrace to 8th Street.

May 10, 2002, D.C. Law 14-133, § 2(a)

Note 1:

(b) All street boundaries lie in the center of the street.

Note 2:

Sec. 3. (a) As of January 2, 2003, the following ANC's established by this act shall become the successors in interest with regard to any assets, obligations or agreements of certain other ANC's established by the Advisory Neighborhood Commissions Boundaries Act of 1992, effective May 21, 1992 (D.C. Law 9-112; D.C. Official Code § 1-309.03, note) ("D.C. Law 9-112") as follows:

(1) ANC 1D shall become the successor of ANC 1E established by D.C. Law 9-112;

(2) ANC 2D established by this act shall become the successor of ANC 1D established by D.C. Law 9-112;

(3) ANC 6-D established by this act shall become the successor of ANC 2-D established by D.C. Law 9-112;

(4)(A) ANC 8-A established by this act shall become the successor of ANC 6-C established by D.C. Law 9-112. No allotment shall be paid to the ANC 6-C established by D.C. Law 9-112 for any quarter after the first quarter of fiscal year 2003.

(B) The new ANC 6-C established by this act shall be entitled to receive its allotment for the second quarter of fiscal year 2003 as soon as practicable after January 1, 2003.

(b) The Chief Financial Officer shall reapportion the quarterly allotments for the periods on or after January 1, 2003 based on the requirements of section 738(e) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 824; D.C. Official Code § 1-207.38(e)) and the new advisory neighborhood commission districts established by this act.

Note 3:

Sec. 6. Boundaries for Advisory Neighborhood Commission areas and single member districts in effect immediately before the effective date of the Advisory Neighborhood Commissions Boundaries Act of 2002 shall remain in effect for the purpose of filling a vacancy in an Advisory Neighborhood Commission prior to January 2, 2003, and for all purposes related to performing Advisory Neighborhood Commission functions until January 2, 2003.

Advisory Neighborhood Commissions Boundaries Act of 2012

Sec. 2. (a) There are hereby established, pursuant to section 4(a) of the Advisory Neighborhood Councils Act of 1975, effective October 10, 1975 (D.C. Law 1-21; D.C. Official Code § 1-309.03(a)), Advisory Neighborhood Commission ("ANC") areas and single-member district ("SMD") areas within ANC areas, the boundaries of which shall be depicted on the official maps of the District of Columbia according to the following legal descriptions:

July 13, 2012, D.C. Law 19-157, § 2(a)

Description of ANC 1A Boundaries

All streets are located in the Northwest quadrant. Beginning at the intersection of 16th Street and Spring Road; East on Spring Road to New Hampshire Avenue; Northeast on New Hampshire Avenue to Rock Creek Church Road; Northeast on Rock Creek Church Road to Park Place; South on Park Place to Michigan Avenue; West on Michigan Avenue to Columbia Road; West on Columbia Road to Sherman Avenue; South on Sherman Avenue to Harvard Street; West on Harvard Street to 13th Street; South on 13th Street to Girard Street; West on Girard Street to 14th Street; South on 14th Street to the continuation of Girard Street; West on Girard Street to 15th Street; South on 15th Street to Fuller Street; West on Fuller Street to 16th Street; North on 16th Street to

Spring Road the point of beginning. July 13, 2012, D.C. Law 19-157, § 2(a) Description of SMD 1A01 Boundaries All streets are located in the Northwest quadrant. Beginning at the intersection of 16th Street and Spring Road; East on Spring Road to 14th Street; South on 14th Street to Ogden Street; Northwest on Ogden Street to Perry Place; West on Perry Place to 16th Street; North on 16th Street to Spring Road, the point of beginning. July 13, 2012, D.C. Law 19-157, § 2(a) Description of SMD 1A02 Boundaries All streets are located in the Northwest quadrant. Beginning at the intersection of 16th Street and Perry Place; East on Perry Place to Ogden Street; Southeast on Ogden Street to 14th Street; South on 14th Street to Newton Street; East on Newton Street to Holmead Place; South on Holmead Place to Monroe Street; Southwest on Monroe Street to 14th Street; North on 14th Street to Newton Street; Northwest on Newton Street to 16th Street; North on 16th Street to Perry Place, the point of beginning. July 13, 2012, D.C. Law 19-157, § 2(a) Description of SMD 1A03 Boundaries All streets are located in the Northwest quadrant. Beginning at the intersection of 16th Street and Irving Street; East on Irving Street to 14th Street; South on 14th Street to Columbia Road; West on Columbia Road to Harvard Court; South along a line bearing due south from the intersection of Columbia Road and Harvard Court to its intersection with Harvard Street; West on Harvard Street to 15th Street; North on 15th Street to Columbia Road; Southwest on Columbia Road to 16th Street; North on 16th Street to Irving Street, the point of beginning. July 13, 2012, D.C. Law 19-157, § 2(a) Description of SMD 1A04 Boundaries All streets are located in the Northwest quadrant. Beginning at the intersection of Spring Road and 14th Street; South on 14th Street to Newton Street; East on Newton Street to Holmead Place; South on Holmead Place to Park Road; Northeast on Park Road to 13th Street; North on 13th Street to Spring Road; West on Spring Road to 14th Street, the point of beginning. July 13, 2012, D.C. Law 19-157, § 2(a) Description of SMD 1A05 Boundaries All streets are located in the Northwest quadrant. Beginning at the intersection of 16th Street and Newton Street; Southeast on Newton Street to 14th Street; South on 14th Street to Monroe Street; Northeast on Monroe Street to Holmead Place; South on Holmead Place to Park Road; Southwest on Park Road to 14th Street; South on 14th Street to Irving Street; West on Irving Street to 16th Street; North on 16th Street to Newton Street, the point of beginning. July 13, 2012, D.C. Law 19-157, § 2(a) Description of SMD 1A06 Boundaries All streets are located in the Northwest quadrant. Beginning at the intersection of 14th Street and Park Road; Northeast on Park Road to

13th Street; North on 13th Street to Monroe Street; East on Monroe Street to 11th Street; South on 11th Street to Lamont Street; East on Lamont Street to Sherman Avenue; South on Sherman Avenue to Kenyon Street; West on Kenyon Street to 11th Street; South on 11th Street to Irving Street; West on Irving Street to 14th Street; North on 14th Street to Park Road, the point of beginning. July 13, 2012, D.C. Law 19-157, § 2(a) Description of SMD 1A07 Boundaries All streets are located in the Northwest quadrant. Beginning at the intersection of Spring Road and 13th Street; South on 13th Street to Monroe Street; East on Monroe Street to 11th Street; South on 11th Street to Lamont Street; East on Lamont Street to Sherman Avenue; North on Sherman Avenue to New Hampshire Avenue; Northeast on New Hampshire Avenue to Spring Road; Northwest on Spring Road to 13th Street, the point of beginning. July 13, 2012, D.C. Law 19-157, § 2(a) Description of SMD 1A08 Boundaries All streets are located in the Northwest quadrant. Beginning at the intersection of Monroe Street and Park Road; East on Park Road to Georgia Avenue; North on Georgia Avenue to Newton Place; East on Newton Place to Warder Street; South on Warder Street to Park Road; East on Park Road to Park Place; North on Park Place to Rock Creek Church Road; West on Rock Creek Church Road to New Hampshire Avenue; Southwest on New Hampshire Avenue to Monroe Street, the point of beginning. July 13, 2012, D.C. Law 19-157, § 2(a) Description of SMD 1A09 Boundaries All streets are located in the Northwest quadrant. Beginning at the intersection of Monroe Street and Park Road; East on Park Road to Georgia Avenue; North on Georgia Avenue to Newton Place; East on Newton Place to Warder Street; South on Warder Street to Lamont Street; West on Lamont Street to 6th Street; South on 6th Street to Keefer Place; West on Keefer Place to Georgia Avenue; South on Georgia Avenue to Kenyon Street; West on Kenyon Street to Sherman Avenue; North on Sherman Avenue to Monroe Street, the point of beginning. July 13, 2012, D.C. Law 19-157, § 2(a) Description of SMD 1A10 Boundaries All streets are located in the Northwest quadrant. Beginning at the intersection of Sherman Avenue and Kenyon Street; South on Sherman Avenue to Columbia Road; East on Columbia Road to Michigan Avenue; East on Michigan Avenue to Park Place; North on Park Place to Park Road; West on Park Road to Warder Street; South on Warder Street to Lamont Street; West on Lamont Street to 6th Street; South on 6th Street to Keefer Place; West on Keefer Place to Georgia Avenue; South on Georgia Avenue to Kenyon Street; West on Kenyon Street to Sherman Avenue, the point of beginning. July 13, 2012, D.C. Law 19-157, § 2(a) Description of SMD 1A11 Boundaries All

streets are located in the Northwest quadrant. Beginning at the intersection of Kenyon Street and Sherman Avenue; South on Sherman Avenue to Harvard Street; West on Harvard Street to 13th Street; North on 13th Street to Columbia Road; West on Columbia Road to 14th Street; North on 14th Street to Irving Street; East on Irving Street to 11th Street; North on 11th Street to Kenyon Street; East on Kenyon Street to Sherman Avenue, the point of beginning. July 13, 2012, D.C. Law 19-157, § 2(a) Description of SMD 1A12 Boundaries All streets are located in the Northwest quadrant. Beginning at the intersection of 16th Street and Columbia Road; South on 16th Street to Fuller Street; East on Fuller Street to 15th Street; North on 15th Street to Girard Street; East on Girard Street to 14th Street; North on 14th Street to the continuation of Girard Street; East on Girard Street to 13th Street; North on 13th Street to Columbia Road; West on Columbia Road to Harvard Court; South along a line bearing due south from the intersection of Columbia Road and Harvard Court to its intersection with Harvard Street; West on Harvard Street to 15th Street; North on 15th Street to Columbia Road; Southwest on Columbia Road to 16th Street, the point of beginning. July 13, 2012, D.C. Law 19-157, § 2(a) Description of ANC 1B Boundaries All streets are located in the Northwest quadrant. Beginning at the intersection of Fuller Street and 16th Street; East on Fuller Street to 15th Street; North on 15th Street to Girard Street; East on Gira

Sections 3 and 4 of D.C. Law 19-157 provided:

“Sec. 3. Applicability of boundaries.

“(a) Except as provided in subsection (b) of this section, the ANC and SMD boundaries set forth in section 2(a) shall apply as of January 2, 2013.

“(b) The ANC and SMD boundaries set forth in section 2(a) shall apply for purposes of administering the November 6, 2012 election, including determining qualifications for candidacy and the residence of a person signing a nominating petition for the November 6, 2012 election.

“Sec. 4. Succession.

“(a) Except as provided in this section, each ANC shall be the successor in interest with regard to any assets, obligations, or agreements of its predecessor previously established by law.

“(b) The successor in interest to any agreement with an ANC as of December 31, 2012 shall be the ANC within whose boundaries the subject of the agreement is located. For purposes of this subsection, the term “agreement” shall include any voluntary agreement executed pursuant to Title 25 of the District of Columbia Official Code, any agreement relating to a Planned Unit Development,

zoning variance, or special exception, and any agreement relating to historic preservation.”

“(c)(1) The financial assets of the ANC’s in Ward 5 shall be collected on or after December 1, 2012, by the Chief Financial Officer, who shall then redistribute them on an equal per capita basis to the new ANC’s in Ward 5 as soon as practicable after January 2, 2013.

“(2) The personal property of each of the ANC’s in Ward 5 shall be transferred to the new Ward 5 ANC within which the property was located in 2012.

“(3) The records of each ANC in Ward 5 in 2012 shall not be destroyed by the 2012 ANC but shall be transferred to the appropriate ANC having primary interest in the matter to which the record relates. The financial records of each ANC in Ward 5 shall be transferred to the District of Columbia Auditor.

“(d)(1) The financial assets of ANC’s 2C and 6C shall be collected on or after December 1, 2012 by the Chief Financial Officer, who shall then redistribute them on an equal per capita basis to the new ANC’s 2C, 6C, and 6E as soon as practicable after January 2, 2013.

“(2) The personal property of ANC’s 2C and 6C shall be transferred to the new ANC’s 2C, 6C and 6E within which the property was located in 2012.

“(3) The records of ANC 2C and 6C in 2012 shall not be destroyed by the 2012 ANC but shall be transferred to the appropriate ANC having primary interest in the matter to which the records relates.

“(c) The assets, obligations, and records of each 2012 ANC in Ward 7 shall transfer to the new ANC in Ward 7 created by this act that primarily represents the same geographic area.

“(f) The Chief Financial Officer, in coordination with the Office of Advisory Neighborhood Commissions, shall reapportion the quarterly allotments for the periods on or after January 2, 2013 based on the requirements of section 738(e) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 824; D.C. Official Code § 1-207.38(e)) and the new ANC areas established by this act.”

§ 1-309.04. Advisory Neighborhood Commissions — Petition required; established by resolution.

(a) As soon as possible after October 10, 1975, but in no case later than 5 days after such date, the District of Columbia Board of Elections and Ethics (hereinafter in this part referred to as the “Board”) shall:

(1) Make available to any resident of an Advisory Neighborhood Commission area copies of petition forms for collecting signatures of registered qualified electors in such area; and

(2) Publish in the District of Columbia Register and in at least 2 newspapers of general circulation in the District of Columbia, the number of registered qualified electors in each Advisory Neighborhood Commission area.

(b) Upon certification by the Board to the Chairman of the Council that 5 percent of the registered qualified electors of an Advisory Neighborhood Commission area have signed a petition calling for the establishment of an Advisory Neighborhood Commission in such area, the Council shall then establish by resolution a nonpartisan elected Advisory Neighborhood Commission for such area, with its members to be elected from the single-member districts established for such area. Nothing in this section shall be construed to permit an individual to sign more than 1 petition for the establishment of an Advisory Neighborhood Commission.

(Oct. 10, 1975, D.C. Law 1-21, § 5, 22 DCR 2067; Oct. 30, 1975, D.C. Law 1-27, § 4, 22 DCR 2472; Sept. 26, 1984, D.C. Law 5-111, § 2(a), 31 DCR 3952.)

Prior Codifications. — 1981 Ed., § 1-255. 1973 Ed., § 1-171c.

Legislative history of Law 1-21. — For legislative history of D.C. Law 1-21, see Historical and Statutory Notes following § 1-309.01.

Legislative history of Law 1-27. — For legislative history of D.C. Law 1-27, see Historical and Statutory Notes following § 1-207.38.

Legislative history of Law 5-111. — For legislative history of D.C. Law 5-111, see His-

torical and Statutory Notes following § 1-309.01.

References in text. — “This act,” referred to

in subsection (a) of this section, is the Advisory Neighborhood Commissions Act of 1975, D.C. Law 1-21.

§ 1-309.05. Advisory Neighborhood Commissions — Qualifications of members; nomination by petition.

(a)(1) No person shall be a member of an Advisory Neighborhood Commission unless he:

(A) Is a registered qualified elector actually residing in the single-member district from which he was elected;

(B) Has been residing in such district continuously for the 60 days immediately preceding the day on which he files the nominating petitions as a candidate as such a member; and

(C) Holds no other elected public office.

(2) For the purpose of this subsection, the term “elected public office” means the Office of Mayor of the District of Columbia, Chairman or member of the Council of the District of Columbia, member of the District of Columbia Board of Education, and the Delegate to the House of Representatives.

(b)(1) Candidates for member of an Advisory Neighborhood Commission shall be nominated by a petition:

(A) Prepared and presented to the Board in accordance with regulations of the Board no later than the 90th calendar day before the date of the election in which he intends to be a candidate; and

(B) Signed by not less than 25 registered qualified electors who are residents of the single-member district from which he seeks election.

(2) Such petitions shall be made available by the Board no later than the 120th calendar day before an election for members of an Advisory Neighborhood Commission.

(Oct. 10, 1975, D.C. Law 1-21, § 6, 22 DCR 2068; Oct. 30, 1975, D.C. Law 1-27, § 4, 22 DCR 2472; Sept. 26, 1984, D.C. Law 5-111, § 2(a), (b), 31 DCR 3952; Feb. 5, 1994, D.C. Law 10-68, § 3(a), 40 DCR 6311; June 5, 2012, D.C. Law 19-137, § 201(b), 59 DCR 2542; July 13, 2012, D.C. Law 19-157, § 6, 59 DCR 5598.)

Section references. — This section is referred to in §§ 1-309.06 and 1-309.33.

Prior Codifications. — 1981 Ed., § 1-256. 1973 Ed., § 1-171d.

Effect of amendments. — D.C. Law 19-137, in subsec. (b)(1)(A), substituted “90th calendar day” for “60th calendar day”; and, in subsec. (b)(2), substituted “144th calendar day” for “90th calendar day”.

D.C. Law 19-157, in subsec. (b)(2), substituted “120th calendar day” for “144th calendar day”.

Temporary Amendment of Section. — Section 201(b) of D.C. Law 19-88, in subsec. (b)(1)(A), substituted “90th calendar day” for “60th calendar day” and substituted “144th calendar day” for “90th calendar day”.

Section 302(b) of D.C. Law 19-88 provided that the act shall expire after 225 days of its having taken effect.

Section 4 of D.C. Law 19-145, in subsec. (b)(2), substituted “120th calendar day” for “144th calendar day”.

Section 7(b) of D.C. Law 19-145 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 201(b) of Comprehensive Military and Overseas Voters Accommodation Emergency Act of 2011 (D.C. Act 19-230, November 16, 2011, 58 DCR 9942).

For temporary (90 day) amendment of section, see § 201(b) of Comprehensive Military and Overseas Voters Accommodation Congress-

sional Review Emergency Amendment Act of 2012 (D.C. Act 19-310, February 22, 2012, 59 DCR 1688).

For temporary (90 day) amendment of section, see § 4 of Advisory Neighborhood Commissions Boundaries Emergency Act of 2012 (D.C. Act 19-341, April 8, 2012, 59 DCR 2788).

Legislative history of Law 1-21. — For legislative history of D.C. Law 1-21, see Historical and Statutory Notes following § 1-309.01.

Legislative history of Law 1-27. — For legislative history of D.C. Law 1-27, see Historical and Statutory Notes following § 1-207.38.

Legislative history of Law 5-111. — For legislative history of D.C. Law 5-111, see Historical and Statutory Notes following § 1-309.01.

Legislative history of Law 10-68. — Law 10-68, the “Technical Amendments Act of 1993,” was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for

its review. D.C. Law 10-68 became effective on February 5, 1994.

Legislative history of Law 19-137. — Law 19-137, the “Comprehensive Military and Overseas Voters Accommodation Amendment Act of 2012”, was introduced in Council and assigned Bill No. 19-356, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on February 7, 2012, and March 6, 2012, respectively. Signed by the Mayor on March 27, 2012, it was assigned Act No. 19-334 and transmitted to both Houses of Congress for its review. D.C. Law 19-137 became effective on June 5, 2012.

Legislative history of Law 19-157. — Law 19-157, the “Advisory Neighborhood Commissions Boundaries Act of 2012”, was introduced in Council and assigned Bill No. 19-528, which was retained by the Council. The Bill was adopted on first and second readings on March 20, 2012, and May 1, 2012, respectively. Signed by the Mayor on May 15, 2012, it was assigned Act No. 19-364 and transmitted to both Houses of Congress for its review. D.C. Law 19-157 became effective on July 13, 2012.

CASE NOTES

Certification.

Board of Elections and Ethics was required to certify candidate who received most votes as winner in Advisory Neighborhood Commission election, despite postelection, precertification notice from winner that she was withdrawing because she no longer lived in district; Board

could not properly certify second-place finisher as winner, and was instead required to hold special election to fill vacancy. D.C. Code 1981, §§ 1-257(d), 1-258. *Bates v. District of Columbia Bd. of Elections & Ethics*, 625 A.2d 891, 1993 D.C. App. LEXIS 130 (1993).

§ 1-309.06. Advisory Neighborhood Commissions — Election of members; term of office; vacancies; change in residency; resignation; removal.

(a) Following the initial elections of members of Advisory Neighborhood Commissions in November 1976, subsequent elections of such members occurred in November of odd-numbered calendar years through 1981. Beginning in 1984, general elections of members of Advisory Neighborhood Commissions shall take place on the 1st Tuesday after the 1st Monday in November of each even-numbered calendar year.

(b)(1) Each member of an Advisory Neighborhood Commission shall serve for a term of 2 years which shall begin at noon on the 2nd day of January next following the date of election of such member, or at noon on the day after the date the Board certifies the election of such member, whichever is later.

(2) Repealed.

(3) Each member of an Advisory Neighborhood Commission holding office at August 2, 1983, shall continue in office until noon on the 2nd day of January next following the date of the election provided for in paragraph (2) [repealed] of this subsection.

(c) Repealed.

(d)(1) Whenever a vacancy exists in the office of a Commissioner, and the vacancy does not occur within the 6-month period prior to a general election, the vacancy shall be filled pursuant to paragraph (6) of this subsection. No vacancy shall be filled if it occurs within the 6-month period prior to a general election.

(2) For purposes of this section, a vacancy is deemed to exist upon the publication of a notice of the vacancy in the District of Columbia Register.

(3) Within 90 days of the date that the Board declares a vacancy, the members of the Advisory Neighborhood Commission where the vacancy exists shall fill the vacancy pursuant to paragraph (6) of this subsection.

(4) Each person appointed or elected to fill a vacancy shall meet the qualifications set forth in § 1-309.05(a).

(5) Each person appointed or elected to fill a vacancy shall serve until a successor has been certified and sworn in pursuant to subsection (b) of this section.

(6)(A) Within 5 days (excluding Saturdays, Sundays, and legal holidays) after the date that the Board declares a vacancy, the Board shall make available petitions for the purpose of obtaining the signatures of registered qualified electors within the affected single-member district.

(B) If petitions are not obtained by any registered qualified elector within the affected single-member district within 14 working days after the petitions have been made available, the Board shall recertify the vacancy by republishing the notice required by paragraph (2) of this subsection.

(C) Within 21 days of the date that the Board makes the petitions available, persons interested in filling the vacancy shall submit a petition to the Board that contains the signatures of at least 25 registered qualified electors within the affected single-member district. The Board, after a 5-working-day challenge period, shall transmit a list of the names of persons who qualify for membership on the affected Advisory Neighborhood Commission.

(D) If there is only one person qualified to fill the vacancy within the affected single-member district, the vacancy shall be deemed filled by the qualified person and the Board shall certify the filling of the vacancy by publication in the District of Columbia Register.

(E) If the Board transmits a list of qualified candidates containing more than one name, the affected Advisory Neighborhood Commission shall give notice at a public meeting that at the next regularly scheduled or special meeting there shall be an open vote of the qualified registered electors of the affected single-member district to elect a Commissioner. All registered qualified electors shall display their voter identification card or, alternatively, be listed as a voter in the affected single-member district on the voter registration list provided by the Board. The ballots shall be counted by at least 2 impartial vote counters. The results shall be read aloud by the Chairperson of the Advisory Neighborhood Commission, or alternatively, by such Commissioners as the Chairperson shall designate. In the event that the Chairperson is vacant, the results shall be read aloud by the Commissioner presiding over the meeting.

(F) After a vacancy has been filled pursuant to this subsection, the affected Advisory Neighborhood Commission shall transmit to the Board a resolution signed by 2 officers of the Advisory Neighborhood Commission that states the winner of the Advisory Neighborhood Commission single-member district election and requests that the Board declare the vacancy filled. The resolution shall also be sent to the following:

- (i) The Council;
- (ii) The Mayor; and
- (iii) The person appointed or elected by the Commission.

(G) The Board shall certify the filling of the vacancy by publication in the District of Columbia Register.

(e) Any member of an Advisory Neighborhood Commission who ceases to reside in the single-member district from which he or she is elected shall be considered to have resigned, and the office shall be declared vacant.

(f)(1) Any member of an Advisory Neighborhood Commission who resigns from the single-member district from which he or she is elected shall submit a letter of resignation to the Board of Elections and Ethics and a copy of the letter to the Council, the Mayor, the Office of Advisory Neighborhood Commissions, the Chairperson of the member's Advisory Neighborhood Commission, and the Vice Chairperson of the member's Advisory Neighborhood Commission. The Board of Elections and Ethics shall then declare the vacancy.

(2) When a vacancy occurs in an Advisory Neighborhood Commission and no letter of resignation is submitted as required by paragraph (1) of this subsection, the respective Advisory Neighborhood Commission shall petition the Board, by a resolution signed by the Chairperson and the secretary of the Advisory Neighborhood Commission, to declare the vacancy. The resolution shall be considered by the Advisory Neighborhood Commission at a special Advisory Neighborhood Commission meeting called for the purpose of considering the vacancy. Prior to the special Advisory Neighborhood Commission meeting, the Advisory Neighborhood Commission shall make a good faith effort to notify, in writing, the Commissioner who is the subject of the resolution. Notice of the meeting shall be sent by certified mail, return receipt requested, to the Commissioner no later than 15 days prior to the meeting, and shall provide that the Commissioner shall have an opportunity to rebut the alleged vacancy. The resolution, accompanied by minutes of the meeting at which the resolution was adopted and a list of those attending the meeting, shall be sent to:

- (A) The Board of Elections and Ethics;
- (B) The Council;
- (C) The Mayor; and

(D) The Commissioner, whenever the vacancy is due to removal or failure to continue the qualifications for office under § 1-309.05.

(3)(A) Any qualified elector may, within a 10-day period, challenge the validity of the resolution filed under paragraph (2) of this subsection, by a written statement duly signed by the challenger, filed with the District of Columbia Board of Elections and Ethics and specifying concisely the alleged defects in said resolution. A copy of the challenged statement shall be sent by

the District of Columbia Board of Elections and Ethics to the Chairperson of the petitioning Advisory Neighborhood Commission.

(B) The District of Columbia Board of Elections and Ethics shall receive evidence in support of and in opposition to the challenge and shall determine the validity of the challenged resolution not more than 30 days after the challenge has been filed. Within 3 days after the announcement of the determination of the District of Columbia Board of Elections and Ethics with respect to the validity of the resolution, either the challenger or the affected single-member district commissioner may apply to the District of Columbia Court of Appeals for a review of the reasonableness of such determination.

(C) The District of Columbia Court of Appeals shall expedite consideration of the determination. The decision of such Court shall be final and not appealable.

(D) If the resolution is found to be valid, then the District of Columbia Board of Elections and Ethics shall declare the vacancy.

(4) Any member of an Advisory Neighborhood Commission may resign prospectively by submitting an irrevocable letter of prospective resignation to the Board, with copies to the Council of the District of Columbia, the Mayor, and the Chairperson of the member's Advisory Neighborhood Commission. The letter shall be sworn, state that it is irrevocable, and give the date that the resignation shall become effective. The resignation shall become effective not more than 60 days following receipt of the letter by the Board. Upon receipt of such letter the Board shall declare the prospective vacancy and proceed to fill it as provided in subsection (d) of this section.

(5) The Board shall have the authority to declare and certify a vacancy on its own initiative, without regard to paragraphs (1) or (2) of this subsection, when:

(A) The office of a Commissioner remains vacant after a general or special election; or

(B) The Board determines, through its established procedures for the maintenance of the voter registration roll, that a Commissioner is no longer a registered qualified elector actually residing in the single-member district from which the Commissioner was elected.

(g) Repealed.

(h)(1) The Board shall maintain a list of the names, a current telephone number, and home addresses of all members of the Advisory Neighborhood Commissions, and shall share that list on a monthly basis with the Office of Advisory Neighborhood Commissions established in § 1-309.15.

(2) The Board shall not release the social security numbers of Commissioners.

(3) This list shall be published at least semiannually in the District of Columbia Register. This list shall also be provided by the Office of Advisory Neighborhood Commissions established in § 1-309.15, to the Alcohol Beverage Control Board, the Historic Preservation Review Board, the Redevelopment Land Agency, the Zoning Commission and the Board of Zoning Adjustment, and to any other District government entity that requests it.

(4) Any change, which may be due to resignation, election, moving, or for any other reason, shall be reported when it occurs by the Office of Advisory

Neighborhood Commissions to the Alcohol Beverage Control Board, the Historic Preservation Review Board, the Redevelopment Land Agency, the Zoning Commission, the Board of Zoning Adjustment, and to any other District government entity that requests it.

(Oct. 10, 1975, D.C. Law 1-21, § 8, 22 DCR 2070; Oct. 30, 1975, D.C. Law 1-27, § 4, 22 DCR 2472; Sept. 20, 1977, D.C. Law 2-16, § 2(b), 24 DCR 3336; Sept. 8, 1979, D.C. Law 3-15, § 2, 25 DCR 11003; June 23, 1981, D.C. Law 4-14, § 2(b), 28 DCR 2132; Aug. 2, 1983, D.C. Law 5-17, § 2, 30 DCR 3196; Sept. 26, 1984, D.C. Law 5-111, § 2(a), (c), 31 DCR 3952; Sept. 26, 1984, D.C. Law 5-116, § 3, 31 DCR 4018; Mar. 16, 1988, D.C. Law 7-92, § 2, 35 DCR 716; Mar. 6, 1991, D.C. Law 8-203, § 3(b), 37 DCR 8420; Mar. 11, 1992, D.C. Law 9-75, § 3, 39 DCR 310; Oct. 3, 1992, D.C. Law 9-174, § 3(a), 39 DCR 5859; Sept. 30, 1993, D.C. Law 10-18, § 2, 40 DCR 5455; Sept. 22, 1994, D.C. Law 10-173, § 3, 41 DCR 5154; Oct. 26, 1995, D.C. Law 11-66, § 2, 42 DCR 4324; Jun. 27, 2000, D.C. Law 13-135, § 2(b), 47 DCR 2741; Mar. 23, 2010, D.C. Law 18-130, § 2, 57 DCR 1191.)

Cross references. — Elections, recall of elected officials, see § 1-1001.17.

Section references. — This section is referred to in §§ 1-309.11, 1-309.34, 1-1001.17, and 36-304.01.

Prior Codifications. — 1981 Ed., § 1-257. 1973 Ed., § 1-171e.

Effect of amendments. — D.C. Law 13-135 rewrote subsec. (d), which formerly read:

“(1) Whenever a vacancy exists in the office of a Commissioner, and the vacancy does not occur within the 6-month period prior to a general election, the vacancy shall be filled pursuant to paragraph (6) of this subsection. No vacancy shall be filled if it occurs within the 6-month period prior to a general election.

“(2) For purposes of this section, a vacancy is deemed to exist upon the publication of a notice of the vacancy in the District of Columbia Register.

“(3) Within 90 days of the date that the Board declares a vacancy, the members of the Advisory Neighborhood Commission area where the vacancy exists

shall fill the vacancy pursuant to paragraph (6) of this subsection.

“(4) Each person appointed or elected to fill a vacancy shall meet the qualifications set forth in § 1-256(a).

“(5) Each person appointed or elected to fill a vacancy shall serve until a successor has been certified and sworn in pursuant to subsection (b) of this section.

“(6)(A) Within 5 days (excluding Saturdays, Sundays, and legal holidays) after the date that the Board declares a vacancy, the Board shall make available petitions for the purpose of obtaining the signatures of registered qualified electors within the affected single-member district.

“(B) In the event petitions are not obtained by any registered qualified elector within the affected single-member district within 7 working days after the petitions have been made available, the Board shall recertify the vacancy by republishing the notice required by paragraph (2) of this subsection.

“(C) Within 21 days of the date the Board makes the petitions available, persons interested in filling the vacancy shall submit a petition to the Board that contains the signatures of at least 25 registered qualified electors within the affected single-member district. The Board, after a 5-working-day challenge period, shall transmit a list of the names of persons who qualify for appointment to the affected Advisory Neighborhood Commission area.

“(D) If there is only one person qualified to fill the vacancy within the affected single-member district, the area Advisory Neighborhood Commissioners shall appoint the qualified person to the vacant Advisory Neighborhood Commissioner position at its next regularly scheduled meeting.

“(E) If the Board transmits a list of qualified candidates containing more than one name, the affected area Advisory Neighborhood Commission shall give notice at a public meeting that at the next regularly scheduled meeting there shall be an open vote of the members of the affected single-member district to elect the new commissioner. All registered qualified electors shall display their voter identification card or, alternatively, be listed on the voter registration list (provided by the Board) as a voter in the affected single-member district. The ballots shall be counted by at least two impartial vote counters. The results shall be read aloud by the Chair of the Advisory Neighborhood Commis-

sion, or alternatively, by such commissioners as the Chair shall designate.

“(F) After a vacancy has been filled pursuant to this subsection, the affected area Advisory Neighborhood Commission shall transmit to the Board a resolution signed by the Chairman and Secretary of the Advisory Neighborhood Commission that states the winner of the Advisory Neighborhood Commissioner SMD election and requests that the Board declare the vacancy filled. The resolution shall also be sent to the following:

“(i) The Council of the District of Columbia;

“(ii) The Mayor; and

“(iii) The person appointed or elected by the Commission.

“(G) The Board shall certify the filling of the vacancy by publication in the District of Columbia Register.”;

rewrote subsec. (f)(2), which formerly read:

“When a vacancy occurs on an Advisory Neighborhood Commission and no letter of resignation is submitted as required by paragraph (1) of this subsection, the respective Advisory Neighborhood Commission shall petition the District of Columbia Board of Elections and Ethics, by a resolution signed by the Chairman and the secretary of the Advisory Neighborhood Commission, to declare the vacancy. The resolution shall be considered by the Commission at a public meeting of the Commission. Prior to the meeting, the Commission shall make a good faith effort to notify, in writing, the Commissioner who is the subject of the resolution. Notice of the meeting shall be sent to the Commissioner no later than 20 days prior to the meeting by certified mail, return receipt requested, and shall provide that the Commissioner shall have an opportunity to rebut the alleged vacancy. The resolution, accompanied by minutes of the meeting at which the resolution was adopted and a list of those attending the meeting, shall be sent to: (A) The District of Columbia Board of Elections and Ethics, (B) the Council of the District of Columbia, and the Mayor, and (C) the Commissioner, whenever the vacancy is due to removal or failure to continue the qualifications for office under § 1-256(a).”;

and rewrote subsec. (h), which formerly read:

“The Board shall maintain a list of the names and home addresses of all members of the Advisory Neighborhood Commissions.

“(1) This list shall be published at least annually in the District of Columbia Register. This list shall also be provided by the Board to the Alcoholic Beverage Control Board and to any other government agency that requests it.

“(2) Any change, which may be due to resignation, election, moving, or for any other reason, shall be reported when it occurs by the Board to the Alcoholic Beverage Control Board

and to any other government agency that requests it.”

D.C. Law 18-130, in subsec. (d)(6)(C), substituted “membership on” for “appointment to”; rewrote subsec. (d)(6)(D); in subsec. (d)(6)(E), substituted “scheduled or special meeting” for “scheduled meeting”; and rewrote subsec. (f)(1).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Election Temporary Amendment Act of 1992 (D.C. Law 9-257, March 25, 1993, law notification 40 DCR 6227).

For temporary (225 day) amendment of section, see § 2 of Advisory Neighborhood Special Election Repeal Temporary Amendment Act of 1999 (D.C. Law 11-17, May 27, 1995, law notification 42 DCR 2844).

For temporary (225 day) amendment of section, see § 2 of Advisory Neighborhood Commission Vacancy Temporary Amendment Act of 1999 (D.C. Law 13-69, April 5, 2000, law notification 47 DCR 2626).

Emergency legislation. — For temporary (90-day) amendment of section, see § 2 of the Advisory Neighborhood Commission Vacancy Emergency Amendment Act of 1999 (D.C. Act 13-145, October 18, 1999, 46 DCR 9906).

For temporary (90-day) amendment of section, see § 2 of the Advisory Neighborhood Commission Vacancy Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-221, January 11, 2000, 47 DCR 467).

Legislative history of Law 1-21. — For legislative history of D.C. Law 1-21, see Historical and Statutory Notes following § 1-309.01.

Legislative history of Law 1-27. — For legislative history of D.C. Law 1-27, see Historical and Statutory Notes following § 1-207.38.

Legislative history of Law 2-16. — For legislative history of D.C. Law 2-16, see Historical and Statutory Notes following § 1-309.01.

Legislative history of Law 3-15. — Law 3-15 was introduced in Council and assigned Bill No. 3-26, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on May 8, 1979 and May 22, 1979, respectively. Signed by the Mayor on June 18, 1979, it was assigned Act No. 3-55 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-14. — For legislative history of D.C. Law 4-14, see Historical and Statutory Notes following § 1-309.03.

Legislative history of Law 5-17. — Law 5-17 was introduced in Council and assigned Bill No. 5-11, which was referred to the Committee on Government Operations. The Bill was adopted on first, amended first and second readings on April 26, 1983, May 10, 1983 and May 24, 1983, respectively. Signed by the Mayor on June 9, 1983, it was assigned Act No. 5-34 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-111. — For legislative history of D.C. Law 5-111, see Historical and Statutory Notes following § 1-309.01.

Legislative history of Law 5-116. — For legislative history of D.C. Law 5-116, see Historical and Statutory Notes following § 1-207.38.

Legislative history of Law 7-92. — Law 7-92 was introduced in Council and assigned Bill No. 7-321, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 8, 1987 and January 5, 1988, respectively. Signed by the Mayor on January 25, 1988, it was assigned Act. No. 7-134 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-203. — For legislative history of D.C. Law 8-203, see Historical and Statutory Notes following § 1-309.14.

Legislative history of Law 9-75. — Law 9-75 was introduced in Council and assigned Bill No. 9-242, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 5, 1991, and December 3, 1991, respectively. Signed by the Mayor on January 3, 1992, it was assigned Act No. 9-127 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-174. — Law 9-174, the “Alcoholic Beverage Control Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-125, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 2, 1992, and July 7, 1992, respectively. Signed by the Mayor on July 27, 1992, it was assigned Act No. 9-280 and transmitted to both Houses of Congress for its review. D.C. Law 9-174 became effective on October 3, 1992.

Legislative history of Law 10-18. — Law 10-18, the “Advisory Neighborhood Commission Vacancy Amendment Act of 1993,” was introduced in Council and assigned Bill No. 10-76, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 1, 1993,

and June 29, 1993, respectively. Signed by the Mayor on July 16, 1993, it was assigned Act No. 10-50 and transmitted to both Houses of Congress for its review. D.C. Law 10-18 became effective on September 30, 1993.

Legislative history of Law 10-173. — Law 10-173, the “National Voter Registration Act Conforming Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-572, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-293 and transmitted to both Houses of Congress for its review. D.C. Law 10-173 became effective on September 22, 1994.

Legislative history of Law 11-66. — Law 11-66, the “Advisory Neighborhood Commission Vacancy Amendment Act of 1995,” was introduced in Council and assigned Bill No. 11-113, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on July 11, 1995, and July 29, 1995, respectively. Signed by the Mayor on August 9, 1995, it was assigned Act No. 11-129 and transmitted to both Houses of Congress for its review. D.C. Law 11-66 became effective on October 26, 1995.

Legislative history of Law 13-135. — For Law 13-135, see notes following § 1-309.01.

Legislative history of Law 18-130. — Law 18-130, the “Advisory Neighborhood Commission Vacancy Amendment Act of 2010,” was introduced in Council and assigned Bill No. 18-324, which was referred to the Committee on Aging and Community Affairs. The bill was adopted on first and second readings on December 15, 2009, and January 5, 2010, respectively. Signed by the Mayor on January 25, 2010, it was assigned Act No. 18-292 and transmitted to both Houses of Congress for its review. D.C. Law 18-130 became effective on March 23, 2010.

Expiration of Law 11-66. — Section 3(b) of D.C. Law 11-66 provided that the act shall expire on Sept. 30, 1999.

References in text. — “Paragraph (2) of this subsection,” which established the term of members elected in 1984, referred to in (b)(3), was repealed by D.C. Law 5-116, § 3(b), effective September 26, 1984.

CASE NOTES

ANALYSIS

Change in residency.
Due process of law.
Review.

Change in residency.

Board of Elections and Ethics was required to certify candidate who received most votes as

winner in Advisory Neighborhood Commission election, despite postelection, precertification notice from winner that she was withdrawing because she no longer lived in district; Board could not properly certify second-place finisher as winner, and was instead required to hold special election to fill vacancy. D.C. Code 1981, §§ 1-257(d), 1-258. *Bates v. District of Colum-*

bia Bd. of Elections & Ethics, 625 A.2d 891, 1993 D.C. App. LEXIS 130 (1993).

Due process of law.

Burden placed on candidates to learn when certification of election will occur, for purposes of seeking judicial review, was consistent with due process notice requirements. D.C. Code 1981, §§ 1-257, 1-258, 1-260(a), 1-268(a, b), 1-1315(b); U.S. Const. Amend. 5. *White v. District of Columbia Bd. of Elections & Ethics*, 537 A.2d 1133, 1988 D.C. App. LEXIS 45 (1988).

Review.

Court of Appeals lacked jurisdiction to consider candidate's petition to set aside election

for advisory neighborhood commissioner for single member district, as result of candidate's failure to file petition within seven days of certification of election by Board of Elections and Ethics, absent any record basis upon which it could reasonably be concluded that candidate was misled by Board as to certification date or that candidate or his counsel was unaware of certification until after seven-day period had expired; candidate asserted, without providing appropriate affidavit, that unnamed employee of Board misinformed him as to certification date. D.C. Code 1981, §§ 1-257, 1-258, 1-260(a), 1-268(a, b), 1-1315(b). *White v. District of Columbia Bd. of Elections & Ethics*, 537 A.2d 1133, 1988 D.C. App. LEXIS 45 (1988).

§ 1-309.07. Advisory Neighborhood Commissions — Determination of election winners.

The candidate in each single-member district receiving the highest number of votes cast in such election shall be declared the winner, except that in the case of a tie the procedures set forth in § 1-1001.10(c) shall govern.

(Oct. 10, 1975, D.C. Law 1-21, § 9, 22 DCR 2071.)

Prior Codifications. — 1981 Ed., § 1-258. 1973 Ed., § 1-171f.

Legislative history of Law 1-21. — For

legislative history of D.C. Law 1-21, see Historical and Statutory Notes following § 1-309.01.

CASE NOTES

ANALYSIS

Change in residency.

Due process of law.

Review.

Change in residency.

Board of Elections and Ethics was required to certify candidate who received most votes as winner in Advisory Neighborhood Commission election, despite postelection, precertification notice from winner that she was withdrawing because she no longer lived in district; Board could not properly certify second-place finisher as winner, and was instead required to hold special election to fill vacancy. D.C. Code 1981, §§ 1-257(d), 1-258. *Bates v. District of Columbia Bd. of Elections & Ethics*, 625 A.2d 891, 1993 D.C. App. LEXIS 130 (1993).

Due process of law.

Burden placed on candidates to learn when certification of election will occur, for purposes of seeking judicial review, was consistent with due process notice requirements. D.C. Code

1981, §§ 1-257, 1-258, 1-260(a), 1-268(a, b), 1-1315(b); U.S. Const. Amend. 5. *White v. District of Columbia Bd. of Elections & Ethics*, 537 A.2d 1133, 1988 D.C. App. LEXIS 45 (1988).

Review.

Court of Appeals lacked jurisdiction to consider candidate's petition to set aside election for advisory neighborhood commissioner for single member district, as result of candidate's failure to file petition within seven days of certification of election by Board of Elections and Ethics, absent any record basis upon which it could reasonably be concluded that candidate was misled by Board as to certification date or that candidate or his counsel was unaware of certification until after seven-day period had expired; candidate asserted, without providing appropriate affidavit, that unnamed employee of Board misinformed him as to certification date. D.C. Code 1981, §§ 1-257, 1-258, 1-260(a), 1-268(a, b), 1-1315(b). *White v. District of Columbia Bd. of Elections & Ethics*, 537 A.2d 1133, 1988 D.C. App. LEXIS 45 (1988).

§ 1-309.08. **Boundary changes.**

(a) Petitions for changes in the boundaries of an Advisory Neighborhood Commission area or single-member district within any such area may be filed with the Council of the District of Columbia during the month of January of the year in which elections for Advisory Neighborhood Commissions are to be held. Such petitions must be signed by at least 5 percent of the registered qualified electors of such Advisory Neighborhood Commission area.

(b) Upon certification by the Board to the Chairman of the Council that 5 percent of the registered qualified electors of an Advisory Neighborhood Commission have signed such a petition, the Council shall, after public hearing, accept or reject such petition.

(c) The Council shall accept or reject such a petition within 3 months after its receipt.

(Oct. 10, 1975, D.C. Law 1-21, § 10, 22 DCR 2071; Oct. 30, 1975, D.C. Law 1-27, § 4, 22 DCR 2472; Sept. 26, 1984, D.C. Law 5-111, § 2(a), 31 DCR 3952.)

Prior Codifications. — 1981 Ed., § 1-259. 1973 Ed., § 1-171g.

Legislative history of Law 1-21. — For legislative history of D.C. Law 1-21, see Historical and Statutory Notes following § 1-309.01.

Legislative history of Law 1-27. — For

legislative history of D.C. Law 1-27, see Historical and Statutory Notes following § 1-207.38.

Legislative history of Law 5-111. — For legislative history of D.C. Law 5-111, see Historical and Statutory Notes following § 1-309.01.

§ 1-309.09. **Conduct of elections.**

(a) The Board is authorized to conduct the elections provided for in this part and to adopt, amend, repeal, and enforce such regulations as are deemed necessary to carry out the provisions of this part. The Board shall conduct such elections in the same manner as elections held under subchapter I of Chapter 10 of this title.

(b) For the purposes of this part, the term “registered qualified elector” means a qualified elector, as defined in § 1-1001.02, registered under § 1-1001.07.

(Oct. 10, 1975, D.C. Law 1-21, § 11, 22 DCR 2072; June 19, 1976, D.C. Law 1-72, § 7, 23 DCR 578.)

Prior Codifications. — 1981 Ed., § 1-260. 1973 Ed., § 1-171h.

Legislative history of Law 1-21. — For legislative history of D.C. Law 1-21, see Historical and Statutory Notes following § 1-309.01.

Legislative history of Law 1-72. — For legislative history of D.C. Law 1-72, see Historical and Statutory Notes following § 1-309.31.

CASE NOTES

ANALYSIS

Due process of law.
Review.

Due process of law.

Burden placed on candidates to learn when certification of election will occur, for purposes of seeking judicial review, was consistent with

due process notice requirements. D.C. Code 1981, §§ 1-257, 1-258, 1-260(a), 1-268(a, b), 1-1315(b); U.S. Const. Amend. 5. *White v. District of Columbia Bd. of Elections & Ethics*, 537 A.2d 1133, 1988 D.C. App. LEXIS 45 (1988).

Review.

Court of Appeals lacked jurisdiction to consider candidate's petition to set aside election for advisory neighborhood commissioner for single member district, as result of candidate's failure to file petition within seven days of certification of election by Board of Elections

and Ethics, absent any record basis upon which it could reasonably be concluded that candidate was misled by Board as to certification date or that candidate or his counsel was unaware of certification until after seven-day period had expired; candidate asserted, without providing appropriate affidavit, that unnamed employee of Board misinformed him as to certification date. D.C. Code 1981, §§ 1-257, 1-258, 1-260(a), 1-268(a, b), 1-1315(b). *White v. District of Columbia Bd. of Elections & Ethics*, 537 A.2d 1133, 1988 D.C. App. LEXIS 45 (1988).

§ 1-309.10. Advisory Neighborhood Commissions — Duties and responsibilities; notice; great weight; access to documents; reports; contributions.

(a) Each Advisory Neighborhood Commission ("Commission") may advise the Council of the District of Columbia, the Mayor and each executive agency, and all independent agencies, boards and commissions of the government of the District of Columbia with respect to all proposed matters of District government policy including, but not limited to, decisions regarding planning, streets, recreation, social services programs, education, health, safety, budget, and sanitation which affect that Commission area. For the purposes of this part, proposed actions of District government policy shall be the same as those for which prior notice of proposed rulemaking is required pursuant to § 2-505(a) or as pertains to the Council of the District of Columbia.

(b) Thirty days written notice, excluding Saturdays, Sundays and legal holidays of such District government actions or proposed actions, including (1) the intent to acquire an interest in real property, either through purchase or lease or (2) the intent to change the use of property owned or leased by or on behalf of the government, shall be given by first-class mail to the Office of Advisory Neighborhood Commissions, each affected Commission, the Commissioner representing a single-member district affected by said actions, and to each affected Ward Councilmember, except where shorter notice on good cause made and published with the notice may be provided or in the case of an emergency and such notice shall be published in the District of Columbia Register. In cases in which the 30-day written notice requirement is not satisfied, notification of such proposed government action or actions to the Commissioner representing the affected single-member district shall be made by mail. The Register shall be made available, without cost, to each Commission. A central record of all such notices shall be held by the Office of Advisory Neighborhood Commissions.

(c)(1) Proposed District government actions covered by this part shall include, but shall not be limited to, actions of the Council of the District of Columbia, the executive branch, or independent agencies, boards, and commissions. In addition to those notices required in subsection (a) of this section, each agency, board and commission shall, before the award of any grant funds to a citizen organization or group, before the transmission to the Council of a proposed revenue bond issuance, or before the formulation of any final policy

decision or guideline with respect to grant applications, comprehensive plans, requested or proposed zoning changes, variances, public improvements, licenses, or permits affecting said Commission area, the District budget and city goals and priorities, proposed changes in District government service delivery, and the opening of any proposed facility systems, provide to each affected Commission notice of the proposed action as required by subsection (b) of this section. Each District of Columbia government entity shall maintain a record of the notices sent to each Commission pursuant to subsection (b) of this section.

(2)(A) The Alcoholic Beverage Control Board ("ABC Board") or its designee shall give notice to Advisory Neighborhood Commissions, the Office of Advisory Neighborhood Commissions, the Commission or Commissions representing the area within 600 feet of where the applicant's establishment is located, and the Commissioner representing an affected single-member district at least 45 calendar days prior to a hearing on applications for issuance or renewal of retailer's licenses, class A, B, C/R, C/T, C/N, C/H, C/X, D/R, D/T, D/N, D/H, D/X, and consumption licenses for clubs, or for transfer of a license of any of these classes to a different location. The ABC Board or its designee party shall give notice by first-class mail, posted not less than 5 calendar days prior to the first day of the 45-calendar-day notice period, and addressed to:

(i) The Commission office, with sufficient copies of the notice for distribution to each Commissioner;

(ii) The Chairperson of the Commission at his or her home address of record; and

(iii) The Commissioner in whose single-member district the establishment is located at his or her home address of record.

(B) In addition, the ABC Board shall provide to each Commission office, on a quarterly basis, a printed list of all Alcohol Beverage Control licenses due to expire in the ensuing 6 months. An Advisory Neighborhood Commission may object to the application in the manner set forth in § 25-115(c) and (e).

(3) The Department of Consumer and Regulatory Affairs shall ensure that each affected Commission, the Commissioner representing the affected single member district, the affected ward Councilmember, and the Office of Advisory Neighborhood Commissions is provided a current list at least twice a month of applications for construction, demolition, raze, and public space permits. The list may be provided by electronic or first-class mail; provided, that the notice to the affected Commission shall be by first-class mail unless the affected Commission agrees in writing to receive electronic mail notifications.

(4) The Office of Zoning shall ensure that each affected Commission, the Commissioner representing the affected single member district, the affected ward Councilmember, and the Office of Advisory Neighborhood Commissions is provided notice of applications, public hearings, proposed actions, and actions on all zoning cases. The notice may be provided by electronic or first-class mail; provided, that the notice to the affected Commission shall be by first-class mail unless the affected Commission agrees in writing to receive electronic mail notifications.

(d)(1) Each Commission so notified pursuant to subsections (b) and (c) of this section of the proposed District government action or actions shall consider each such action or actions in a meeting with notice given in accordance with § 1-309.11(c) which is open to the public in accordance with § 1-309.11(g). The recommendations of the Commission, if any, shall be in writing and articulate the basis for its decision.

(2) At the close of business of the day after which the notice period concludes as provided in subsection (b) or (c) of this section, the affected District government entity may proceed to make its decision.

(3)(A) The issues and concerns raised in the recommendations of the Commission shall be given great weight during the deliberations by the government entity. Great weight requires acknowledgement of the Commission as the source of the recommendations and explicit reference to each of the Commission's issues and concerns.

(B) In all cases the government entity is required to articulate its decision in writing. The written rationale of the decision shall articulate with particularity and precision the reasons why the Commission does or does not offer persuasive advice under the circumstances. In so doing, the government entity must articulate specific findings and conclusions with respect to each issue and concern raised by the Commission. Further, the government entity is required to support its position on the record.

(C) The government entity shall promptly send to the Commission and the respective ward Councilmember a copy of its written decision.

(4) Oral testimony shall be followed as if provided in advance in writing as required by paragraph (1) of this subsection when accompanied within 7 days by written documentation approved by the respective Commission, which supports the testimony.

(e) Reserved.

(f) Each Commission may present its views to any federal or District agency.

(g) The Commission shall not have the power to initiate a legal action in the courts of the District of Columbia or in the federal courts, provided that this limitation does not apply to or prohibit any Commissioner from bringing suit as a citizen.

(h)(1) Each Commission may initiate its own proposal for District government action. The District government entity to which the proposal is made shall acknowledge the proposal in writing to the initiating Commission within 10 days of receipt of the proposal and shall issue a status report to the initiating Commission within 60 days of receipt.

(2) Any Commission may hold public hearings on requested or proposed government actions. Commissions may invite public witnesses from any executive or independent entity to testify before the Commission. Within 45 days of the close of the public hearing, the Commission may submit to the Council a report detailing the Commission's findings and recommendations to be included in any public record of the proposed government action.

(i)(1) Each Commission shall have access to District government officials and to all District government official documents and public data pursuant to § 2-531 et seq. that are material to the exercise of its development of recommendations to the District government.

(2) The Mayor shall provide to all Commissions, at no cost, current zoning and alcohol beverage control regulations, and any other regulations requested in writing by the respective Commission not available electronically, in order for Commissioners to adequately perform their responsibilities.

(j)(1) On or before November 30 of each year, each Commission may file an annual report with the Council and the Mayor for the preceding fiscal year. Such report shall include, but shall not be limited to:

(A) Summaries of important problems perceived by the Commission in order of their priority;

(B) Recommendations for actions to be taken by the District government;

(C) Recommendations for improvements on the operation of the Commissions;

(D) Financial report; and

(E) A Summary of Commission activities.

(2) Minority reports may be filed.

(k) Reserved.

(l) No Commission may solicit or receive funds unless specifically authorized to do so by the Council, except that receipt of individual contributions of \$1,000 or less need not be approved by the Council. No person shall make any contribution, nor shall a Commission receive any contribution from any person which, when aggregated with all other contributions received from that person, exceeds \$1,000 per calendar year. Each Commission shall file with its quarterly reports to the District of Columbia Auditor required pursuant to § 1-309.13(j) details of all contributions received during the relevant period of time.

(m) Each Commission shall monitor complaints of Commission area residents with respect to the delivery of District government services and file comments on same with the appropriate District government entity and the Council.

(n) Each Commission shall develop an annual fiscal year spending plan budget for the upcoming fiscal year within 60 days of notification of the amount of the Commission's annual allotment. Prior to adoption of the budget at a public meeting, the Commission shall present the budget at a public meeting of the Commission to elicit comments from the residents of the Commission area.

(o) Each Commission may, where appropriate, constitute the citizen advisory mechanism required by any federal statute (unless specifically prohibited by federal statute).

(p) Each Commission that adopts recommendations regarding legislation pending before the Council shall forward a copy of the recommendations to the Office of Advisory Neighborhood Commissions ("Office") and to the Secretary to the Council within 14 days after adoption. The Office shall keep a publicly accessible file of all Commission recommendations submitted pursuant to this subsection.

(Oct. 10, 1975, D.C. Law 1-21, § 13, as added Mar. 26, 1976, D.C. Law 1-58, § 2, 22 DCR 5454; Apr. 19, 1977, D.C. Law 1-120, § 3, 23 DCR 9924; Oct. 26,

1977, D.C. Law 2-30, § 2(a), (b), 24 DCR 3723; Apr. 30, 1988, D.C. Law 7-104, § 37, 35 DCR 147; Mar. 6, 1991, D.C. Law 8-203, § 3(c), 37 DCR 8420; Oct. 3, 1992, D.C. Law 9-174, § 3(b), 39 DCR 5859; Apr. 29, 1998, D.C. Law 12-91, § 2(a), 45 DCR 1312; Jun. 27, 2000, D.C. Law 13-135, § 3(a), 47 DCR 2741; Mar. 6, 2002, D.C. Law 14-79, § 2, 48 DCR 11266; June 12, 2003, D.C. Law 14-310, § 3, 50 DCR 1092; Sept. 30, 2004, D.C. Law 15-187, § 104, 51 DCR 6525; Apr. 13, 2005, D.C. Law 15-349, § 2, 52 DCR 1997; Mar. 3, 2010, D.C. Law 18-111, § 2011, 57 DCR 181; Mar. 14, 2012, D.C. Law 19-102, § 2, 59 DCR 430.)

Cross references. — National capital revitalization program, relation to other laws, see § 2-1219.07.

Sale of public lands, Mayor's authority, notice to affected advisory neighborhood commission, see § 10-801.

Prior Codifications. — 1981 Ed., § 1-261. 1973 Ed., § 1-171i.

Effect of amendments. — D.C. Law 13-135, in the section heading added "notice; great weight; access to documents; reports; contributions", and rewrote the section.

D.C. Law 14-79, in subsec. (l), substituted "\$1000" for "\$400" in two places.

D.C. Law 14-310, in subsec. (c)(1), inserted "before the transmission to the Council of a proposed revenue bond issuance," after "organization or group."

D.C. Law 15-187, in subsec. (c)(2)(A), substituted "The Alcoholic Beverage Control Board ('ABC Board') or its designee shall give notice to Advisory Neighborhood Commissions, the Office of Advisory Neighborhood Commissions, the Commission or Commissions representing the area within 600 feet of where the applicant's establishment is located, and the Commissioner representing an affected single-member district at least 45 calendar days prior to a hearing on applications for issuance or renewal of retailer's licenses, class A, B, C/R, C/T, C/N, C/H, C/X, D/R, D/T, D/N, D/H, D/X, and consumption licenses for clubs, or for transfer of a license of any of these classes to a different location." for "The Alcoholic Beverage Control Board ('ABC Board') or its designee shall give notice to Advisory Neighborhood Commissions, the Office of Advisory Neighborhood Commissions, the Commission representing the area in which the applicant's establishment is located, and the Commissioner representing an affected single-member district at least 45 calendar days prior to a hearing on applications for issuance or renewal of retailer's licenses, class A, B, C/R, C/T, C/N, C/H, C/X, D/R, D/T, D/N, D/H, D/X, and consumption licenses for clubs, or for transfer of a license of any of these classes to a different location."

D.C. Law 15-349, in subsec. (b), substituted "District government actions or proposed ac-

tions, including (1) the intent to acquire an interest in real property, either through purchase or lease or (2) the intent to change the use of property owned or leased by or on behalf of the government," for "District government actions or proposed actions".

D.C. Law 18-111 added subsecs. (c)(3) and (4). D.C. Law 19-102 added subsec. (p).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Advisory Neighborhood Commission Annual Contribution Temporary Amendment Act of 2001 (D.C. Law 14-60, January 24, 2002, law notification 49 DCR 989).

Temporary Addition of Section. — Section 2 of D.C. Law 19-3 added a section to read as follows:

"Sec. 2. A plan to train Advisory Neighborhood Commissioners.

"(a) Within 90 days of the effective date of the One City Service and Response Training Emergency Act of 2011, effective February 15, 2011 (D.C. Act 19-16; 58 DCR 1534), the Mayor shall submit a plan to the Council on instituting a program to train Advisory Neighborhood Commissioners in responding to emergency situations to assist the efforts of the Homeland Security and Emergency Management Agency and other applicable emergency response agencies.

"(b) In addition to other emergency situation training, the plan shall include training to properly respond to snow emergencies and down, or damaged, power lines."

Section 4(b) of D.C. Law 19-3 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2 of Advisory Neighborhood Commissions Annual Contribution Emergency Amendment Act of 2001 (D.C. Act 14-125, August 3, 2001, 48 DCR 7932).

For temporary (90 day) amendment of section, see § 2 of Advisory Neighborhood Commissions Annual Contribution Legislative Review Emergency Amendment Act of 2001 (D.C. Act 14-162, November 2, 2001, 48 DCR 10402).

For temporary (90 day) amendment of section, see § 2011 of Fiscal Year 2010 Budget

Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 2011 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 1-21. — For legislative history of D.C. Law 1-21, see Historical and Statutory Notes following § 1-309.01.

Legislative history of Law 1-58. — Law 1-58 was introduced in Council and assigned Bill No. 1-193, which was referred to the Committee on Advisory Neighborhood Commissions. The Bill was adopted on first and second readings on December 2, 1975 and December 16, 1975, respectively. Signed by the Mayor on January 9, 1976, it was assigned Act No. 1-85 and transmitted to both Houses of Congress for its review.

Legislative history of Law 1-120. — Law 1-120 was introduced in Council and assigned Bill No. 1-340, which was referred to the Committee on the Judiciary and the Committee on Criminal Law. The Bill was adopted on first and second readings on November 23, 1976 and December 7, 1976, respectively. Enacted without signature by the Mayor on January 1, 1977, it was assigned Act No. 1-206 and transmitted to both Houses of Congress for its review.

Legislative history of Law 2-30. — Law 2-30 was introduced in Council and assigned Bill No. 2-72, which was referred to the Committee on Advisory Neighborhood Commissions. The Bill was adopted on first and second readings on June 28, 1977 and July 12, 1977, respectively. Signed by the Mayor on August 5, 1977, it was assigned Act No. 2-67 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-104. — Law 7-104 was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on Nov. 24, 1987 and Dec. 8, 1987, respectively. Signed by the Mayor on Dec. 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-203. — For legislative history of D.C. Law 8-203, see Historical and Statutory Notes following § 1-309.14.

Legislative history of Law 9-174. — For legislative history of D.C. Law 9-174, see Historical and Statutory Notes following § 1-309.06.

Legislative history of Law 12-91. — Law 12-91, the "Advisory Neighborhood Commissions Quorum Definition Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-263, which was referred to the Committee on Government Operations. The

Bill was adopted on first and second readings on December 4, 1997, and January 6, 1998, respectively. Signed by the Mayor on January 26, 1998, it was assigned Act No. 12-263 and transmitted to both Houses of Congress for its review. D.C. Law 12-91 became effective on April 29, 1998.

Legislative history of Law 13-135. — For Law 13-135, see notes following § 1-309.01.

Legislative history of Law 14-79. — Law 14-79, the "Advisory Neighborhood Commissions Annual Contribution Amendment Act of 2001," was introduced in Council and assigned Bill No. 14-150, which was referred to the Committee on Public Services. The Bill was adopted on first and second readings on October 2, 2001, and November 6, 2001, respectively. Signed by the Mayor on November 29, 2001, it was assigned Act No. 14-199 and transmitted to both Houses of Congress for its review. D.C. Law 14-79 became effective on March 6, 2002.

Legislative history of Law 14-310. — For Law 14-310, see notes following § 1-307.63.

Legislative history of Law 15-187. — Law 15-187, the "Omnibus Alcoholic Beverage Amendment Act 2004," was introduced in Council and assigned Bill No. 15-516, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on April 20, 2004, and May 18, 2004, respectively. Signed by the Mayor on June 23, 2004, it was assigned Act No. 15-442 and transmitted to both Houses of Congress for its review. D.C. Law 15-187 became effective on September 30, 2004.

Legislative history of Law 15-349. — Law 15-349, the "Notice Requirement for Publicly Funded Building Projects Amendment Act of 2004," was introduced in Council and assigned Bill No. 15-635 which was referred to the Committee Public Services. The Bill was adopted on first and second readings on November 9, 2004, and December 21, 2004, respectively. Signed by the Mayor on January 19, 2005, it was assigned Act No. 15-743 and transmitted to both Houses of Congress for its review. D.C. Law 15-349 became effective on April 13, 2005.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 1-301.181.

Legislative history of Law 19-102. — Law 19-102, the "Public Notice of Advisory Neighborhood Commissions Recommendations Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-91, which was referred to the Committee on Aging and Community Affairs. The Bill was adopted on first and second readings on December 6, 2011, and January 4, 2012, respectively. Signed by the Mayor on January 20, 2012, it was assigned Act No. 19-277 and transmitted to both Houses of Congress for its review. D.C. Law 19-102 became effective on March 14, 2012.

Short title. — Short title: Section 2010 of D.C. Law 18-111 provided that subtitle B of title II of the act may be cited as the “Expedited Advisory Neighborhood Commissions Notification Amendment Act of 2009”.

References in text. — Section 25-115, referred to in subsection (c)(2)(B) of this section, is part of Title 25, D.C. Code, which title was amended and enacted by D.C. Law 13-298, effective May 3, 2001. For disposition of the subject matter of former Title 25, see the Disposition Table preceding § 25-101.

Transfer of Functions. — The functions of the Department of Licenses, Investigations, and Inspections were transferred to the De-

partment of Consumer and Regulatory Affairs by Reorganization Plan No. 1 of 1983, effective March 31, 1983.

Editor’s notes. — Authorization for the solicitation and acceptance of grant monies by Advisory Neighborhood Commission 2D: Pursuant to §§ 2 and 3 of D.C. Law 10-130, the Council authorized Advisory Neighborhood Commission 2D to solicit and accept grant monies for the funding of an employee to research development proposals within its boundaries. Section 4(b) of D.C. Law 10-130 provided that the act expires on December 31, 1995.

CASE NOTES

ANALYSIS

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Letter to prospective lessee from mayor with respect to lease of surplus property could not be read as indicating a present intent on part of the District of Columbia to be bound since, though letter reflected the District’s interest in binding itself in the future, it contained a condition which had to be met before the District could be bound and was sent while parties were still negotiating total maximum term period. D.C. Code 1981, § 1-261(b-d); D.C. Code 1973, § 9-301; D.C. Code 1976 Supp., § 1-144(a). *Georgetown Entm’t Corp. v. District of Columbia*, 496 A.2d 587, 1985 D.C. App. LEXIS 448 (1985).

Letter which was sent to prospective lessee by alternate contracting officer with respect to lease of surplus property and which, though advising lessee that advisory neighborhood commission was being informed of an intent to accept, also voiced an anticipation as to further negotiations could not be read as indicating a present intent on part of the District of Columbia to be bound. D.C. Code 1981, § 1-261(b-d); D.C. Code 1973, § 9-301; D.C. Code 1976 Supp., § 1-144(a). *Georgetown Entm’t Corp. v.*

District of Columbia, 496 A.2d 587, 1985 D.C. App. LEXIS 448 (1985).

Great weight.

Board of Zoning Adjustment (BZA) did not violate its statutory obligation to accord “great weight” to issues and concerns properly raised by local advisory neighborhood commission with respect to application for zoning relief, seeking to expand hotel; only timely written report that commission submitted to BZA was its letter supporting application, BZA re-assessed issues raised in commission’s motion requesting rehearing and reconsideration of application, including proximity of new construction to condominium, and BZA undertook to give great weight to each issue and concern belatedly raised by commission. *Quincy Park Condo. Unit Owners’ Ass’n v. D.C. Bd. of Zoning Adjustment*, 4 A.3d 1283, 2010 D.C. App. LEXIS 554 (2010).

Written recommendations of advisory neighborhood commissions (ANCs) are to be accorded great weight by the board of zoning adjustment (BZA). *Economides v. D.C. Bd. of Zoning Adjustment*, 954 A.2d 427, 2008 D.C. App. LEXIS 373 (2008).

Written decision of Board of Zoning Adjustment (BZA) did not articulate with particularity and precision why BZA rejected position of advisory neighborhood commission that sixth level of subject building was not an “attic,” and thus, BZA did not fully satisfy its obligation to give “great weight” to concerns expressed by commission in proceeding in which BZA upheld building permits issued with respect to building, which allowed property owner to demolish existing row house and construct new, five-unit apartment building. *Kalorama Citizens Ass’n v. D.C. Bd. of Zoning Adjustment*, 934 A.2d 393, 2007 D.C. App. LEXIS 644 (2007).

Written recommendations of two advisory neighborhood commissions (ANC) which did

not have jurisdiction over university site were not entitled to be given great weight by Board of Zoning Adjustment (BZA) when Board reviewed Department of Consumer and Regulatory Affairs' (DCRA) decision to allow university to convert one of its buildings into child development center in residential district designed essentially for row dwellings; university was not near areas over which ANC's had jurisdiction, and Board did not specifically solicit recommendations from ANC's, though ANC's had arguable interest in any precedent established by university's case. *Georgetown Residents Alliance v. D.C. Bd. of Zoning Adjustment*, 816 A.2d 41, 2003 D.C. App. LEXIS 27 (2003).

An agency must elaborate, with precision, its response to the issues and concerns raised by an Advisory Neighborhood Commission (ANC), articulating why the particular ANC itself, given its vantage point, does or does not offer persuasive advice under the circumstances. *Neighbors Against Foxhall Gridlock v. D.C. Bd. of Zoning Adjustment*, 792 A.2d 246, 2002 D.C. App. LEXIS 43 (2002).

Giving "great weight" to the issues and concerns raised by an Advisory Neighborhood Commission (ANC) is not a quantum requirement, and thus, the agency is not obliged to follow the ANC's recommendations or adopt its views. *Neighbors Against Foxhall Gridlock v. D.C. Bd. of Zoning Adjustment*, 792 A.2d 246, 2002 D.C. App. LEXIS 43 (2002).

Advisory Neighborhood Commissions (ANC) do not enjoy "expert" status that is entitled to special deference as such; rather, the agency must pay specific attention to the source, as well as the content, of ANC recommendations, giving them whatever deference they merit in the context of the entire proceedings, including the evidence and views presented by others. *Neighbors Against Foxhall Gridlock v. D.C. Bd. of Zoning Adjustment*, 792 A.2d 246, 2002 D.C. App. LEXIS 43 (2002).

Requirement that Board of Zoning Adjustment (BZA) give "great weight" to views of advisory neighborhood commission (ANC) implies explicit reference to each ANC issue and concern as such, as well as specific findings and conclusions with respect to each. D.C. Code 1981, § 1-261(d); D.C.Mun.Reg. title 11, § 3307.2. *Neighbors on Upton Street v. District of Columbia Bd. of Zoning Adjustment*, 697 A.2d 3, 1997 D.C. App. LEXIS 130 (1997).

In ruling on zoning exception, Board of Zoning Adjustment (BZA) must address and make specific findings on each issue raised by neighborhood advisory commission, but agency is not required to defer to committee's views but must only address committee concerns with particularity. D.C. Code 1981, § 1-261(d). *Gladden v. District of Columbia Bd. of Zoning Adjustment*, 659 A.2d 249, 1995 D.C. App. LEXIS 113 (1995).

In deciding whether to grant special exception, Board of Zoning Adjustment (BZA) must afford "great weight" to written reports of affected Advisory Neighborhood Commissions (ANC) and, in its response, BZA must articulate why particular ANC itself, given its vantage point, does, or does not, offer persuasive advice under circumstances. D.C. Code 1981, § 1-261(d); D.C.Mun.Reg. tit. 11, § 3307.2. *Neighbors United for a Safer Community v. District of Columbia Bd. of Zoning Adjustment*, 647 A.2d 793, 1994 D.C. App. LEXIS 171 (1994).

Only written recommendations, and not oral testimony, of Advisory Neighborhood Commission (ANC) must be accorded great weight by Board of Zoning Adjustments (BZA) in its decisions that affect that ANC. D.C. Code 1981, § 1-261(a, d); D.C.Mun.Reg. Tit. 11, § 3307.2. *Neighbors United for a Safer Community v. District of Columbia Bd. of Zoning Adjustment*, 647 A.2d 793, 1994 D.C. App. LEXIS 171 (1994).

Advisory Neighborhood Commission (ANC) across street from proposed adult rehabilitation facility for which special exception was sought was "affected" by it, and so ANC's written recommendations were entitled to be given "great weight" by Board of Zoning Adjustments (BZA), notwithstanding that facility was within boundaries of another ANC. D.C. Code 1981, § 1-261(a, d); D.C.Mun.Reg. tit. 11, § 3307.2. *Neighbors United for a Safer Community v. District of Columbia Bd. of Zoning Adjustment*, 647 A.2d 793, 1994 D.C. App. LEXIS 171 (1994).

Board of Zoning Adjustments (BZA) did not give required "great weight" to written reports of affected Advisory Neighborhood Commission (ANC) when BZA granted special exception for proposed adult rehabilitation facility; in addressing concern of ANC regarding number of similar facilities in community, BZA's response relied upon number of facilities in entire ward that included ANC, and so did not respond "with precision," and BZA did not offer any articulation as to why ANC did not offer persuasive advice under the circumstances. D.C. Code 1981, § 1-261(a, d); D.C.Mun.Reg. tit. 11, § 3307.2. *Neighbors United for a Safer Community v. District of Columbia Bd. of Zoning Adjustment*, 647 A.2d 793, 1994 D.C. App. LEXIS 171 (1994).

As required by ordinance, Board of Zoning Adjustment properly accorded "great weight" to positions of advisory neighborhood commission in considering university's request for variances and special exceptions to allow for addition to medical building by considering written submissions and live testimony either from commission or from property owners whose positions were identical to those raised by commission. D.C. Code 1981, § 1-261(d). *Draude v.*

District of Columbia Bd. of Zoning Adjustment, 582 A.2d 949, 1990 D.C. App. LEXIS 281 (1990).

Alcoholic Beverage Control Board, which on renewal proceedings expressly took note of concerns of local advisory neighborhood commission and rejected them for reasons which Board stated in its decision, fulfilled its statutory duty under D.C. Code 1981, § 1-261(d), requiring that issues and concerns raised in recommendation of a local advisory neighborhood commission be given great weight during deliberations by a governmental agency. *Upper Georgia Ave. Planning Committee v. Alcoholic Beverage Control Bd.*, 500 A.2d 987, 1985 D.C. App. LEXIS 562 (1985).

So long as Alcoholic Beverage Control Board makes explicit reference to each advisory neighborhood commission issue and concern as such, as well as specific findings and conclusions with respect to each, Board meets requirements of D.C. Code 1981, § 1-261(d), requiring that issues and concerns raised in recommendation of commission be given great weight during deliberations by a governmental agency; Board is not obliged to follow commission's recommendations or adopt its views. *Upper Georgia Ave. Planning Committee v. Alcoholic Beverage Control Bd.*, 500 A.2d 987, 1985 D.C. App. LEXIS 562 (1985).

Alcoholic Beverage Control Board gave requisite "great weight" to concerns of advisory neighborhood commissions in its determination of whether to grant applicant Class B liquor license as required in D.C. Code 1981, § 1-261(d), where Board listed each concern, addressed each separately, and made specific findings and conclusions with respect to each. *Gerber v. District of Columbia Alcoholic Beverage Control Bd.*, 499 A.2d 1193, 1985 D.C. App. LEXIS 528 (1985).

Inasmuch as zoning commission's decision to grant rezoning application was handed down prior to 1977 Court of Appeals decision interpreting statutory section requiring that "great weight" be given to issues and concerns of advisory neighborhood commission, administrative decision would not be overturned for failure to give "great weight" to issues and concerns of advisory neighborhood commission. D.C. Code § 1-171i(d). *Lee v. District of Columbia Zoning Com.*, 411 A.2d 635, 1980 D.C. App. LEXIS 234 (1980).

Where Alcoholic Beverage Control Board, which granted class B beverage license, specifically discussed each concern raised by local advisory neighborhood commission, cited evidence and other findings in a reasonable manner and explained why Board rejected commission's recommendation, Board had satisfied statutory requirement that recommendations of local advisory neighborhood commission be given great weight during the deliberation and

that the issues raised by it be discussed in the written rationale; Board was not required to follow commission's advice. D.C. Code § 1-171i(d). *Spevak v. District of Columbia Alcoholic Beverage Control Board*, 407 A.2d 549, 1979 D.C. App. LEXIS 449 (1979).

Statutory requirement that issues and concerns raised in recommendations of advisory neighborhood commission shall be given great weight by board of zoning adjustment is intended to make certain that neighborhood views receive specific attention by agency concerned, and thus, for cases in which administrative determination was made prior to judicial decision which held that statute requires board to elaborate, with precision, response to each concern raised by advisory neighborhood commission, if record reveals that agency was cognizant of and paid attention to pertinent and specific neighborhood issues and concerns raised by commission, then court will not reverse merely because decision did not satisfy specific prescriptions of decision. D.C. Code § 1-171i(d). *Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 1978 D.C. App. LEXIS 577 (1978).

Requirement of duties and responsibilities of Advisory Neighborhood Commissions Act of 1975 that "great weight" be given to all issues and concern raised by advisory neighborhood commission in all cases where written notice to ANC is required does not imply that greater deference must be given than that accorded ordinary citizens' groups or that ANCs be accorded agency expertise or presumption of deference; requirement means, rather, that agency must elaborate, with precision, its response to ANC issues and concerns. D.C. Code § 1-171i(d). *Kopff v. District of Columbia Alcoholic Beverage Control Board*, 381 A.2d 1372, 1977 D.C. App. LEXIS 311 (1977).

In proceedings before District of Columbia Alcoholic Beverage Control Board on application for liquor license, requirement in duties and responsibilities of the Advisory Neighborhood Commissions Act of 1975 that "great weight" be given to views of advisory neighborhood commissions implied that explicit reference should be given by Board to each ANC issue and concern as such, that specific findings and conclusions with respect to each should be made, and that ANC be acknowledged as source of issue or concern. D.C. Code §§ 1-171i(d), 25-115(b). *Kopff v. District of Columbia Alcoholic Beverage Control Board*, 381 A.2d 1372, 1977 D.C. App. LEXIS 311 (1977).

Historic preservation.

Advisory neighborhood commission was precluded from seeking judicial review of order of mayor's agent for Historic Landmark and Historic District Protection Act authorizing issuance of demolition permit. D.C. Code §§ 5-821

to 5-835. *Don't Tear It Down, Inc. v. D. C. Dep't of Housing & Community Development*, 428 A.2d 369, 1981 D.C. App. LEXIS 238 (1981).

Chairman of advisory neighborhood commission was not entitled to be substituted in his individual capacity as party petitioner in action seeking review of order of mayor's agent for Historic Landmark and Historic District Protection Act authorizing issuance of demolition permit, since advisory neighborhood commission could not be a party and substitution was not necessary because two original parties in opposition were petitioners on appeal, and chairman did not wish to file additional brief and did not assert that petitioners before Court of Appeals could not adequately represent interests of ANC. D.C. Code §§ 5-821 to 5-835; D.C. Code Court of Appeals Rules, Rule 43(a, b). *Don't Tear It Down, Inc. v. D. C. Dep't of Housing & Community Development*, 428 A.2d 369, 1981 D.C. App. LEXIS 238 (1981).

The basic legislative purpose of the Historic Protection Act was to provide a comprehensive system of protection for historic sites, but the entire act would be rendered a nullity as to historic bridges if its protections could be evaded through the simple expedient of not applying for a building permit before altering those bridges. *Butler v. District of Columbia Dep't of Pub. Works*, 115 WLR 949 (Super. Ct. 1987).

The court had no authority to vacate a decision of the Historic Preservation Review Board where there was a technical violation of the Advisory Neighborhood Commissions (ANC) statute, § 1-261 et seq., not by the Board but exclusively by the ANC itself. *Dwyer v. District of Columbia*, 120 WLR 2609 (Super. Ct. 1992).

Where the Historic Preservation Review Board's written decision does not comply with the specific statutory mandate requiring the Board to give "great weight" to the opinion or position of an Advisory Neighborhood Commission (ANC), violation of this requirement is to be remedied with a remand of the case to the agency, so that it can properly consider the ANC's position and supplement its final decision appropriately. *Dwyer v. District of Columbia*, 120 WLR 2609 (Super. Ct. 1992).

The Advisory Neighborhood Commission (ANC) is the real party in interest, with standing to complain about lack of adequate notice from the Historic Preservation Review Board; the Mayor would be the real party in interest to complain about the untimely receipt of an ANC resolution. *Dwyer v. District of Columbia*, 120 WLR 2609 (Super. Ct. 1992).

Issues and concerns.

Under statute requiring board of zoning adjustment to give great weight to issues and concerns raised in recommendations of advisory neighborhood commission, "issues and

concerns" encompasses only legally relevant issues and concerns, and thus board's failure to consider and discuss irrelevant issue is not error. D.C. Code § 1-171i(d). *Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 1978 D.C. App. LEXIS 577 (1978).

Judicial review.

— Evidence, judicial review.

In considering application for a class "D" liquor license, the Alcoholic Beverage Control Board did not improperly shift burden of proof to petitioners from applicants on issue of appropriateness of premises, even though Board may have entertained a presumption in favor of the applicant on issues of trash disposal, noise, parking, and traffic congestion, where other findings on these issues which were phrased in the affirmative were supported by substantial evidence and Board received a petition containing 190 signatures in support of application, a fact that was relevant to statutory requirement that wishes of neighboring residents and property owners be taken into account. D.C. Code 1973, § 25-115(a), par. 6. *Haight v. District of Columbia Alcoholic Beverage Control Bd.*, 439 A.2d 487, 1981 D.C. App. LEXIS 410 (1981).

Board of zoning adjustments was required to support its findings with more than mere scintilla of rationally connected evidentiary support. D.C. Code § 1-1509(e). *Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 1978 D.C. App. LEXIS 577 (1978).

— In general.

Any error by Board of Zoning Adjustment (BZA), during variance proceeding, in refusing to give "great weight" to "issues and concerns" of Advisory Neighborhood Commission (ANC) was not reversible; because BZA concluded that proposed use did not require a variance, while ANC discussed only whether variance should be granted, issues and concerns raised by ANC were not legally relevant. D.C. Code 1981, § 1-261(d). *Concerned Citizens of Brentwood v. District of Columbia Bd. of Zoning Adjustment*, 634 A.2d 1234, 1993 D.C. App. LEXIS 318 (1993).

Error, if any, committed by Alcoholic Beverage Control Board in allegedly failing to give great weight to views of local advisory neighborhood commission which represented a nearby neighborhood in determining whether to renew class C liquor license for restaurant was harmless, in that Commission made the same objections to the renewal as those objections of another commission which the Board considered. D.C. Code 1981, § 1-261(a, d). *Upper Georgia Ave. Planning Committee v. Alcoholic Beverage Control Bd.*, 500 A.2d 987, 1985 D.C. App. LEXIS 562 (1985).

Claim that Alcoholic Beverage Control Board's decision to grant class B beverage li-

cense was invalid because commissioner allegedly lived outside District of Columbia but was serving on Board would not be considered in proceeding on petition for review of Board's order where such claim was not presented to local advisory neighborhood commission at any time during the proceedings. D.C. Code § 1-1510. *Spevak v. District of Columbia Alcoholic Beverage Control Board*, 407 A.2d 549, 1979 D.C. App. LEXIS 449 (1979).

Alcoholic Beverage Control Board, which granted class B beverage license, was not required to explain why it chose to rely on some evidence rather than other evidence before it. D.C. Code § 1-1509(e). *Spevak v. District of Columbia Alcoholic Beverage Control Board*, 407 A.2d 549, 1979 D.C. App. LEXIS 449 (1979).

Though neighborhood opinion is an important factor for Alcoholic Beverage Control Board to consider in determining whether to grant beverage license, Board is statutorily required to weigh other factors as well. D.C. Code § 25-115(a), par. 6. *Spevak v. District of Columbia Alcoholic Beverage Control Board*, 407 A.2d 549, 1979 D.C. App. LEXIS 449 (1979).

Validity of action of District of Columbia Alcoholic Beverage Control Board in issuing liquor license was not mooted as issue by virtue of fact that, after license was initially issued and before court review of Board's action was completed, license was renewed and renewal was not contested. D.C. Code §§ 11-101(2)(A), 11-705(b), 25-111(g), 25-115(b); U.S. Const. art. 1, § 1 et seq.; art. 3, § 1 et seq. *Kopff v. District of Columbia Alcoholic Beverage Control Board*, 381 A.2d 1372, 1977 D.C. App. LEXIS 311 (1977).

In proceedings on application for liquor license, District of Columbia Alcoholic Beverage Control Board did not abuse its discretion in refusing to consider hearsay summaries of residents' views about proposed license and information concerning potential congestive impact of metro station under construction nearby. D.C. Code § 25-111(g). *Kopff v. District of Columbia Alcoholic Beverage Control Board*, 381 A.2d 1372, 1977 D.C. App. LEXIS 311 (1977).

— Notice, judicial review.

Order dismissing complaint of local neighborhood advisory commission, which claimed entitlement to 30 days' notice before District of Columbia Redevelopment Land Agency began process of selecting developers to receive exclusive rights to submit development proposals, would be affirmed, notwithstanding statutory requirement of notice "before the formulation of any final policy decision or guideline with respect to... licenses, or permits..." D.C. Code 1981, § 1-261(c)(1). *Richardson v. District of*

Columbia Redevelopment Land Agency, 453 A.2d 118, 1982 D.C. App. LEXIS 490 (1982).

City agency's failure to notify advisory neighborhood commission of application for building permit in its area was error; however, error was harmless since ANC had actual knowledge of the impending construction and had an opportunity to present its views. D.C. Code § 1-171a et seq. *Shiflett v. District of Columbia Bd. of Appeals & Review*, 431 A.2d 9, 1981 D.C. App. LEXIS 288 (1981).

— Standing, judicial review.

Advisory neighborhood commission had no capacity to seek court review of action of District of Columbia Alcoholic Beverage Control Board in issuing liquor license; area residents who were commission members, however, had standing to initiate such review and to assert rights of commission itself. D.C. Code §§ 1-171a et seq., 1-171i(g), 1-1502(9), 1-1510, 25-111(g), 25-114, 25-115(b); D.C. Code Court of Appeals Rules, rule 15. *Kopff v. District of Columbia Alcoholic Beverage Control Board*, 381 A.2d 1372, 1977 D.C. App. LEXIS 311 (1977).

— Sufficiency of findings, judicial review.

Zoning Commission's failure to articulate with particularity and precision, in approval of university's campus plan, why it rejected advisory neighborhood commission-supported recommendation that students and others affiliated with university be required to have parking stickers in order to facilitate enforcement of the plan required remand. *Spring Valley - Wesley Heights Citizens Ass'n v. D.C. Zoning Comm'n*, 856 A.2d 1174, 2004 D.C. App. LEXIS 436 (2004).

While the Board of Zoning Adjustment (BZA) is not required to defer to an advisory neighborhood commission's (ANC's) views, failure to address ANC concerns with particularity is grounds for a remand. *Watergate W., Inc. v. D.C. Bd. of Zoning Adjustment*, 815 A.2d 762, 2003 D.C. App. LEXIS 18 (2003).

The Board of Zoning Adjustment (BZA) must elaborate, with precision, its response to advisory neighborhood commission (ANC) issues and concerns, and articulate why the particular ANC itself, given its vantage point, does or does not offer persuasive advice under the circumstances. *Watergate W., Inc. v. D.C. Bd. of Zoning Adjustment*, 815 A.2d 762, 2003 D.C. App. LEXIS 18 (2003).

While Board of Zoning Adjustment is not required to defer to advisory neighborhood commission's views, failure to address commission's concerns with particularity is grounds for remand even if other procedural requirements are met. D.C. Code 1981, § 1-261(d). *Levy v. District of Columbia Bd. of Zoning Adjustment*, 570 A.2d 739, 1990 D.C. App. LEXIS 36 (1990).

Portion of Board of Zoning Adjustment's order approving university's campus development plan, which deleted, without explanation, condition requiring university to locate off-campus interim space leased for office and administrative purposes in commercial districts required remand; Board's conclusion was not supported by subsidiary findings of fact and conflicted with order's findings. D.C. Code 1981, § 1-261(d). *Levy v. District of Columbia Bd. of Zoning Adjustment*, 570 A.2d 739, 1990 D.C. App. LEXIS 36 (1990).

In granting class C liquor license for hotel restaurant, the Alcoholic Beverage Control Board adequately addressed and made findings on question of whether presence of license would alter character of neighborhood and with respect to issues and concerns raised by advisory neighborhood commission. D.C. Code 1981, §§ 1-261(d), 25-115(a)(6). *Foggy Bottom Asso. v. District of Columbia Alcoholic Beverage Control Bd.*, 445 A.2d 643, 1982 D.C. App. LEXIS 351 (1982).

Even if findings and conclusions of Board of Zoning Adjustment satisfied demand for substantial evidence test when Board denied application for special exception to allow continued accessory parking in residential area, those findings and conclusions did not come to grips with advisory neighborhood commission view that there were problems with unauthorized use of lot, but that lot should not be forced to close, and, therefore, denial was not supported by substantial evidence. D.C. Code 1977 Supp. § 1-171i(D). *Bakers Local Union v. District of Columbia Bd. of Zoning Adjustment*, 437 A.2d 176, 1981 D.C. App. LEXIS 393 (1981).

Inasmuch as zoning commission failed to make a finding on a material contested issue of parking facilities, its decision granting application to amend zoning map classification allowing construction of single-family detached dwelling to classification permitting single-family rowhouse dwelling would be remanded. D.C. Code § 1-1509(e). *Lee v. District of Columbia Zoning Com.*, 411 A.2d 635, 1980 D.C. App. LEXIS 234 (1980).

In proceeding in which Alcoholic Beverage Control Board granted class B beverage license, Board made adequate findings on all material issues, including the issues pertaining to parking and traffic, trash collection, neighborhood opinions, impact on the area and adequacy of existing retail liquor services. D.C. Code § 25-115(a), par. 6. *Spevak v. District of Columbia Alcoholic Beverage Control Board*, 407 A.2d 549, 1979 D.C. App. LEXIS 449 (1979).

In proceeding in which Alcoholic Beverage Control Board granted class B beverage license, conclusion that applicant's site was an appropriate site, considering wishes of persons residing in or owning property in the neighborhood, was supported by substantial evidence. D.C.

Code § 1-1509(e). *Spevak v. District of Columbia Alcoholic Beverage Control Board*, 407 A.2d 549, 1979 D.C. App. LEXIS 449 (1979).

In proceeding in which Alcoholic Beverage Control Board granted class B beverage license, Board's finding to effect that granting the license would not have adverse impact on the neighborhood was supported by substantial evidence. D.C. Code § 1-1509(e). *Spevak v. District of Columbia Alcoholic Beverage Control Board*, 407 A.2d 549, 1979 D.C. App. LEXIS 449 (1979).

Board of zoning adjustment is required to supplement its decision in a contested case with factual findings, which must consist of concise statement of conclusions upon each contested issue of fact, and full reasons must be given for each decision; neither repetition of statutory language nor simple summary of evidence satisfies these requirements. D.C. Code § 1-1509(e). *Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 1978 D.C. App. LEXIS 577 (1978).

In proceeding on application for issuance of liquor license, District of Columbia Alcoholic Beverage Control Board entered findings which were adequate to address each contested issue, including saturation of liquor licenses, parking in traffic, refuse storage, character of neighborhood, and neighborhood wishes and desires. D.C. Code §§ 1-1509(e), 1-1510, 25-107, 25-115. *Kopff v. District of Columbia Alcoholic Beverage Control Board*, 381 A.2d 1372, 1977 D.C. App. LEXIS 311 (1977).

Substantial evidence supported action of District of Columbia Alcoholic Beverage Control Board in issuing "Class C" liquor license in connection with proposed Irish family restaurant. D.C. Code §§ 1-1509(e), 1-1510(3)(E), 25-111(g). *Kopff v. District of Columbia Alcoholic Beverage Control Board*, 381 A.2d 1372, 1977 D.C. App. LEXIS 311 (1977).

Neighborhood.

In proceedings on application for issuance of Class C liquor license, District of Columbia Alcoholic Beverage Control Board was not required to define relevant neighborhood as being coextensive with boundaries of advisory neighborhood commission which opposed issuance of license. D.C. Code §§ 1-1509(e), 1-1510(3)(E), 25-111(g). *Kopff v. District of Columbia Alcoholic Beverage Control Board*, 381 A.2d 1372, 1977 D.C. App. LEXIS 311 (1977).

Notice.

Code section requiring the District of Columbia government, or any of its agencies, to give 30 days' notice to any affected advisory neighborhood commission (ANC) of any proposed action in a rulemaking proceeding could not reasonably be read as imposing a requirement on the Board of Zoning Adjustment (BZA) to

allow an ANC, or anyone else, 30 days to respond to a supplemental submission in a zoning appeal; instead, situation was governed by zoning regulation providing that written responses shall be filed within seven days following the date by which exhibits, information, or briefs are due. D.C. Code 1981, § 1-261(b); D.C.Mun.Reg. title 11, § 3326.6. *Neighbors on Upton Street v. District of Columbia Bd. of Zoning Adjustment*, 697 A.2d 3, 1997 D.C. App. LEXIS 130 (1997).

Statutory notice to District of Columbia advisory neighborhood commissions (ANC) is required for proposed governmental decisions affecting neighborhood planning and development, as specified in ANC statutes. D.C. Code 1981, §§ 1-251, 1-261. *Office of People's Counsel v. Public Serv. Comm'n*, 630 A.2d 692, 1993 D.C. App. LEXIS 206 (1993).

District of Columbia advisory neighborhood commissions are not entitled to statutory special notice of adjudicative proceeding unless proceeding concerns matter specifically listed in statute governing such notice. D.C. Code 1981, § 1-261(c). *Office of People's Counsel v. Public Serv. Comm'n*, 630 A.2d 692, 1993 D.C. App. LEXIS 206 (1993).

Advisory neighborhood commissions (ANC) were not entitled to special statutory notice of proposed government action in electric utility's rate case before Public Service Commission; only new power plant involved in case was plant under construction in Maryland, which would have no direct impact of significance to neighborhood planning and development within any particular ANC area so as to trigger special notice requirement. D.C. Code 1981, §§ 1-251(c, d), 1-261(b), (c)(1). *Office of People's Counsel v. Public Serv. Comm'n*, 630 A.2d 692, 1993 D.C. App. LEXIS 206 (1993).

Public Service Commission was not required to give "great weight" to advice it received from advisory neighborhood commissions (ANC) in electric utility rate case; only new power plant involved in case was plant under construction in Maryland, which would have no direct impact of significance to neighborhood planning and development within any particular ANC area so as to trigger special notice requirement. D.C. Code 1981, §§ 1-251(c, d), 1-261(b), (c)(1), (d). *Office of People's Counsel v. Public Serv. Comm'n*, 630 A.2d 692, 1993 D.C. App. LEXIS 206 (1993).

Affected District of Columbia advisory neighborhood commission is entitled to statutory notice when utility requests government action listed in statute governing notice such as zoning change or permit to build power plant or other facility in District. D.C. Code 1981, § 1-261(b), (c)(1). *Office of People's Counsel v. Public Serv. Comm'n*, 630 A.2d 692, 1993 D.C. App. LEXIS 206 (1993).

List of building permits applied for and issued by District of Columbia Department of Consumer and Regulatory Affairs which Advisory Neighborhood Commission received from Department was sufficient notice of application for building permit under statute requiring that each affected Advisory Neighborhood Commission be provided regularly by mail with current list of applications for construction and demolition permits within boundaries of that Advisory Neighborhood Commission. D.C. Code 1981, § 1-261(c)(3). *Tenley & Cleveland Park Emergency Committee v. District of Columbia Bd. of Zoning Adjustment*, 550 A.2d 331, 1988 D.C. App. LEXIS 206 (1988), writ of certiorari denied by 489 U.S. 1082, 109 S. Ct. 1539, 103 L. Ed. 2d 843, 1989 U.S. LEXIS 1460, 57 U.S.L.W. 3620 (1989).

Statute providing that each agency shall, before the formulation of any final policy decision with respect to permits affecting said commission area, provide to each affected commission 30 days' notice of the proposed action must be construed as requiring 30 days' notice of the body of proceedings arising from each permit application, not each stage of the proceedings. D.C. Code 1981, §§ 1-261(b), (c)(1), 1-1509(a). *Committee for Washington's Riverfront Parks v. Thompson*, 451 A.2d 1177, 1982 D.C. App. LEXIS 451 (1982).

Notice of the October 5, 1981 hearing on the proposed waterfront development was timely when the affected advisory neighborhood commission had already been properly informed, but even if 30 days' notice of the hearing was required, where the affected advisory neighborhood commission presented its views at the hearing and was represented by counsel, no prejudice to the affected advisory neighborhood commission occurred by reason of the allegedly deficient notice. D.C. Code 1981, §§ 1-261(b), (c)(1), 1-1509(a). *Committee for Washington's Riverfront Parks v. Thompson*, 451 A.2d 1177, 1982 D.C. App. LEXIS 451 (1982).

Construction which the mayor's agent gave to the rules of procedure promulgated pursuant to the Historic Protection Act and which was to effect that the regulation required 30 days' notice of the entire body of proceedings arising from each permit application and, hence, was inapplicable to a hearing which merely constituted a stage in proceedings, was not clearly erroneous. D.C. Code 1981, §§ 1-261(b), (c)(1), 1-1509(a). *Committee for Washington's Riverfront Parks v. Thompson*, 451 A.2d 1177, 1982 D.C. App. LEXIS 451 (1982).

Actual notice of the proposed development to the affected advisory neighborhood commission which allows meaningful participation in a proceeding is sufficient to cure merely technical violations of the statutory 30-day notice requirement. D.C. Code 1981, §§ 1-261(b), (c)(1), 1-1509(a). *Committee for Washington's River-*

front Parks v. Thompson, 451 A.2d 1177, 1982 D.C. App. LEXIS 451 (1982).

Notice of the October 5, 1981 site visit and hearing by the mayor's agent in connection with the proposed waterfront development was not inadequate as untimely or as insufficiently identifying the issues that would be addressed. D.C. Code 1981, §§ 1-261(b), (c)(1), 1-1509(a). Committee for Washington's Riverfront Parks v. Thompson, 451 A.2d 1177, 1982 D.C. App. LEXIS 451 (1982).

Every proposed governmental decision affecting neighborhood planning and development, as defined in duties and responsibilities of Advisory Neighborhood Commissions Act of 1975, for which prior hearing is required by law is sufficiently significant to require written notice pursuant to such Act to affected advisory neighborhood commission or commissions. D.C. Code § 1-171i(c). Kopff v. District of Columbia Alcoholic Beverage Control Board, 381 A.2d 1372, 1977 D.C. App. LEXIS 311 (1977).

Duties and responsibilities of the Advisory Neighborhood Commissions Act of 1975 requires timely written notice to advisory neighborhood commissions in adjudicative situation such as issuance of particular liquor notice, and requirement of such special notice is not limited to legislative actions. D.C. Code §§ 1-171, 1-171(d), 1-171i, 1-171i(a, c). Kopff v. District of Columbia Alcoholic Beverage Control Board, 381 A.2d 1372, 1977 D.C. App. LEXIS 311 (1977).

Requirement that notice of hearing on application for liquor license be given to known remonstrants applied to reschedulings of such hearings. D.C. Code § 25-115(b). Kopff v. District of Columbia Alcoholic Beverage Control Board, 381 A.2d 1372, 1977 D.C. App. LEXIS 311 (1977).

Alcoholic Beverage Control Board erred when it failed to give special notice to affected advisory neighborhood commission before it issued liquor license; such error was cured, however, when actual notice was given to affected ANC's by individual remonstrants. D.C. Code § 1-171i(c). Kopff v. District of Columbia Alcoholic Beverage Control Board, 381 A.2d 1372, 1977 D.C. App. LEXIS 311 (1977).

Special exceptions.

On application for zoning exception for a proposed youth rehabilitation home, zoning regulations did not require Board of Zoning Adjustment (BZA) to consider concentration of youth homes in neighborhood compared with other parts of district, as opposed to whether concentration, in and of itself, had adverse impact on neighborhoods. D.C. Code 1981, § 1-261; D.C. Mun.Reg. title 11, §§ 335.3, 335.6, 3307.2. Gladden v. District of Columbia Bd. of

Zoning Adjustment, 659 A.2d 249, 1995 D.C. App. LEXIS 113 (1995).

If prerequisites set out in particular regulations are met, Board of Zoning Adjustment must grant application for special exception. D.C. Code 1977 Supp. § 1-171i(D). Bakers Local Union v. District of Columbia Bd. of Zoning Adjustment, 437 A.2d 176, 1981 D.C. App. LEXIS 393 (1981).

In a proceeding in which property owner sought special exception to allow continued accessory parking in residential area, advisory neighborhood commission concerns were required to relate to statutory criteria for granting special exception. D.C. Code 1977 Supp. § 1-171i(D). Bakers Local Union v. District of Columbia Bd. of Zoning Adjustment, 437 A.2d 176, 1981 D.C. App. LEXIS 393 (1981).

In ruling on supermarket's application for special exceptions to build parking lot in a residentially zoned area adjoining site of supermarket's proposed store, zoning board was not required to address testimony of commissioner of advisory neighborhood commission to effect that the parking lot was the "wrong kind of expansion" as such was merely an opinion which did not relate to any statutory criteria for granting a special exception. D.C. Code §§ 1-171i(d), 5-420. Friendship Neighborhood Coalition v. District of Columbia Board of Zoning Adjustment, 403 A.2d 291, 1979 D.C. App. LEXIS 394 (1979).

Substantial compliance.

Under statute requiring board of zoning adjustment to give great weight to issues and concerns raised in recommendations of advisory neighborhood commission, substantial compliance with statute is required for cases in which administrative precision preceded date of judicial decision holding that board was required to elaborate with precision responses to each concern raised by advisory neighborhood commission. D.C. Code §§ 1-171i(d), 1-1510. Wheeler v. District of Columbia Board of Zoning Adjustment, 395 A.2d 85, 1978 D.C. App. LEXIS 577 (1978).

For purposes of rule requiring substantial compliance with requirements of statute providing that issues and concerns raised in recommendations of advisory neighborhood commission shall be given great weight by board of zoning adjustment, "substantial compliance" is such compliance with essential requirements of statutory provision as may be sufficient for accomplishment of purposes thereof; it means actual compliance in respect to substance essential to every reasonable objective of statute. D.C. Code §§ 1-171i(d), 1-1510. Wheeler v. District of Columbia Board of Zoning Adjustment, 395 A.2d 85, 1978 D.C. App. LEXIS 577 (1978).

§ 1-309.11. Advisory Neighborhood Commissions — Meetings; bylaws governing operation and internal structure; officers.

(a) Reserved.

(b)(1) Each Commission shall meet in public session at regular intervals at least 9 times per year at locations that are designed to reasonably accommodate the residents of the Commission area, depending on the issues to be considered by the Commission. The Commission may declare a quorum and take official action if a majority of single-member district Commissioners of the Commission is present, provided that a majority of the single-member districts have Commissioners on the Commission pursuant to § 1-309.06.

(2) To the extent possible, each Commission shall, at its first meeting of the calendar year, adopt a schedule of regular Commission meetings for the remainder of the calendar year. Each Commission shall, at its public meetings, consider and make recommendations on matters before the Commission that may include, but are not limited to, actions or proposed actions of the Council, the Mayor, executive branch agencies, or any independent agency, board, or commission.

(3) Each Commission shall set aside a portion of each public meeting to hear the views of residents within the Commission area and other affected persons on problems or issues of concern within the Commission area and on proposed District government actions that affect the Commission area. Community views shall be adequately considered in positions taken by the Commission. Each Commission shall establish mechanisms to ensure the broadest dissemination of information with respect to Commission meetings, positions, and actions.

(c) Each Commission shall give notice of all meetings or convocations to each Commissioner, individuals with official business before the Commission, and residents of the Commission area no less than 7 days prior to the date of such meeting. Shorter notice may be given in the case of an emergency or for other good cause. Notice of regular and emergency meetings must include, but is not limited to, at least 2 of the following:

(1) Posting written notices in at least 4 conspicuous places in each single-member district within the Commission area;

(2) Publication in a city or community newspaper;

(3) Transmitting or distributing notice to a list of residents and other stakeholders in the community; and

(4) In any other manner approved by the Commission.

(d) Each Commission shall establish bylaws governing its operation and internal structure.

(1) These bylaws shall include the following:

(A) The geographic boundaries of the Commission area;

(B) A statement of Commission responsibilities;

(C) Voting procedures;

(D) The establishment of standing and special committees, including provisions for giving public notice of all committee meetings;

- (E) The manner of selection of chairpersons and other officers;
- (F) Presiding officers;
- (G) Procedures for prompt review and action on committee recommendations;
- (H) The use of the Commission office and supplies;
- (I) Procedures for receipt of, and action upon constituent recommendations at both the single-member district and Commission levels; and
- (J) Pursuant to § 1-309.13(c), the procedures for the filling of a vacancy in the office of treasurer.

(2) Said bylaws shall be consistent with the provisions of this part and other applicable laws and shall be a public document.

(3) An up-to-date copy of each Commission's bylaws and all amendments thereto shall be filed with the Council and the Office of Advisory Neighborhood Commissions within 30 days of any amendment to the bylaws.

(d-1) No Commission shall be entitled to incorporation, provided that no member of the Commission may be liable for action taken as an elected representative from a single-member district.

(e)(1) Each Commission shall elect from among its members at a public meeting of the Commission held in January of each year a Chairperson, vice-chairperson, secretary, and treasurer. Each Commission may also elect any other officers the Commission deems necessary. The Chairperson shall serve as convener of the Commission and shall chair the Commission meetings. The vice-chairperson shall fulfill the obligations of the Chairperson in the Chairperson's absence. The secretary shall ensure that appropriate minutes of Commission meetings are kept and that appropriate notice of Commission meetings is provided in accordance with subsection (c) of this section. The treasurer shall perform the duties provided for in § 1-309.13. The views or recommendations of each Commission shall only be presented by its officers, Commissioners, or representatives appointed by the Commission at a public meeting to represent the Commission's views on a particular issue or proposed action.

(2)(A) Removal of any officer shall be undertaken at a special Commission meeting.

(B) A special Commission meeting to remove an officer shall be called if at least one-half of the elected Commissioners request in writing that the Chairperson take such action. After the request is made, the Chairperson shall schedule the meeting to take place within 30 days of receipt of the request.

(C) The Chairperson shall preside over the meeting unless the vote will affect the Chairperson's own position. In that case, the vice-chairperson shall act as the presiding officer.

(D) Provided a quorum is present at the special Commission meeting called pursuant to subparagraph (B) of this paragraph, the vote of a majority of the Commissioners shall remove the officer from his or her office.

(3) Where not otherwise provided, the procedures of the Commission shall be governed by Robert's Rules of Order.

(f) Chairmanship of each Commission committee or task force shall be open to any resident of the Commission area. The chairperson of each such

committee or task force shall be appointed by the Commission. Each Commission shall make a good faith effort to involve all segments of the Commission population in its deliberations regardless of race, sex, age, voting status, religion, economic status, sexual orientation, or gender identity or expression.

(g) Each Commission, including each committee of a Commission, shall be subject to the open meetings provisions of § 1-207.42(a). No meeting may be closed to the public unless personnel or legal matters are discussed. Without limiting the scope of that section, the following categories of information are specifically made available to the public:

- (1) The names, salaries, title, and dates of employment of all employees of the Commission;
- (2) Final decisions of the Commission, including concurring and dissenting opinions;
- (3) Information of every kind dealing with the receipt or expenditure of public or other funds by the Commission;
- (4) All documents not related to personnel and legal matters;
- (5) The minutes of all Commission meetings; and
- (6) Reports of the District of Columbia Auditor.

(Oct. 10, 1975, D.C. Law 1-21, § 14, as added Mar. 26, 1976, D.C. Law 1-58, § 2, 22 DCR 5460; Sept. 26, 1984, D.C. Law 5-111, § 2(d), 31 DCR 3952; Mar. 6, 1991, D.C. Law 8-203, § 3(d), 37 DCR 8420; Apr. 29, 1998, D.C. Law 12-91, § 2(b), 45 DCR 1312; Jun. 27, 2000, D.C. Law 13-135, § 3(b), 47 DCR 2741; June 25, 2008, D.C. Law 17-177, § 2(b), 55 DCR 3696; Mar. 31, 2011, D.C. Law 18-350, § 3, 58 DCR 734.)

Section references. — This section is referred to in §§ 1-309.10 and 36-304.01.

Prior Codifications. — 1981 Ed., § 1-262. 1973 Ed., § 1-171j.

Effect of amendments. — D.C. Law 13-135 in the section nameline added “, open meetings”, and rewrote this section, which formerly read:

“(a) Repealed.

“(b) Each Commission shall meet in public session at regular intervals at least 9 times per year at locations that are designed to reasonably accommodate the residents of the Commission area, depending on the issues to be considered by the Commission. A Commission may declare a quorum and take official action if a majority of elected representatives of the Commission is present, provided that a majority of the single-member districts have representatives on the Commission pursuant to § 1-257. To the extent possible, each Commission shall, at its first meeting of the calendar year, adopt a schedule of regular Commission meetings for the remainder of the calendar year. Each Commission shall, at its public meetings, consider and make recommendations on matters before the Commission that may include, but are not limited to, actions or proposed actions of the Council, the Mayor, executive branch agencies,

or any independent agency, board, or commission. Each Commission shall set aside a portion of each public meeting to hear the views of residents within the Commission area and other affected persons on problems or issues of concern within the Commission area and on proposed District government actions that affect the Commission area. Community views shall be adequately considered in positions taken by the Commission. Each Commission shall establish mechanisms to ensure the broadest dissemination of information with respect to Commission meetings, positions, and actions.

“(c) Each Commission shall give notice of all meetings or convocations to each Commission member and residents of the Commission area no less than 7 days prior to the date of such meeting. Shorter notice may be given in the case of an emergency or for other good cause. Notice of regular and emergency meetings may be given by:

“(1) Posting written notices in at least 2 conspicuous places in each single-member district within the Commission area;

“(2) Publication in a city or community newspaper;

“(3) Mailing notice to a mailing list; and

“(4) In any other manner directed by the Commission.

“(d) Each Commission shall establish bylaws governing its operation and internal structure.

“(1) These bylaws shall include a statement of Commission responsibilities, voting procedures, the establishment of standing and special committees, the manner of selection of chairpersons and other officers, procedures for prompt review and action on committee recommendations and procedures for receipt of and action upon constituent recommendations at both the single-member district and Commission levels. Said bylaws shall be consistent with the provisions of this act and other applicable laws and shall be a public document.

“(2) An up-to-date copy of each Commission’s bylaws and all amendments thereto shall be filed with the Council of the District of Columbia within 30 days of any amendment to the bylaws. No Commission shall be entitled to incorporation, provided that no member of the Commission may be liable for action taken as an elected representative from a single-member district.

“(e) Each Commission shall elect from among its members at a public meeting of the Commission held in January of each year a Chairperson, vice-chairperson, secretary, and treasurer. Each Commission may also elect any other officers the Commission deems necessary. The Chairperson shall serve as convener of the Commission and shall chair the Commission meetings. The vice-chairperson shall fulfill the obligations of the Chairperson in the Chairperson’s absence. The secretary shall ensure that appropriate minutes of Commission meetings are kept and that appropriate notice of Commission meetings is provided in accordance with subsection (c) of this section. The treasurer shall perform the duties provided for in § 1-264. The views or recommendations of each Commission shall only be presented by its officers, Commissioners, or representatives appointed by the Commission at a public meeting to represent the Commission’s views on a particular issue or proposed action. Where not otherwise provided, the procedures of the Commission shall be governed by Robert’s Rules of Order.

“(f) Chairmanship of each Commission committee or task force shall be open to any resident of the Commission area. The chairperson

of each such committee or task force shall be appointed by the Commission. Each Commission shall make a good faith effort to involve all segments of the Commission population in its deliberations regardless of race, sex, age, voting status, religious or economic status.

“(g) Each Commission shall be subject to the provisions of § 1-1504(a).”

D.C. Law 17-177, in subsec. (f), substituted “sexual orientation, or gender identity or expression” for “or sexual orientation”.

D.C. Law 18-350, in subsec. (d)(1)(D), substituted “special committees, including provisions for giving public notice of all committee meetings,” for “special committees;” and, in subsec. (g), substituted “Each Commission, including each committee of a Commission, shall be subject” for “Each Commission shall be subject”.

Legislative history of Law 1-21. — For legislative history of D.C. Law 1-21, see Historical and Statutory Notes following § 1-309.01.

Legislative history of Law 1-58. — For legislative history of D.C. Law 1-58, see Historical and Statutory Notes following § 1-309.10.

Legislative history of Law 5-111. — For legislative history of D.C. Law 5-111, see Historical and Statutory Notes following § 1-309.01.

Legislative history of Law 8-203. — For legislative history of D.C. Law 8-203, see Historical and Statutory Notes following § 1-309.14.

Legislative history of Law 12-91. — For legislative history of D.C. Law 12-91, see Historical and Statutory Notes following § 1-309.10.

Legislative history of Law 13-135. — For Law 13-135, see notes following § 1-309.01.

Legislative history of Law 17-177. — For Law 17-177, see notes following § 1-309.01.

Legislative history of Law 18-350. — Law 18-350, the “Open Meetings Amendment Act of 2010”, was introduced in Council and assigned Bill No. 18-716, which was referred to the Committee on Government Operations and the Environment. The Bill was adopted on first and second readings on December 7, 2010, and December 21, 2010, respectively. Signed by the Mayor on January 19, 2011, it was assigned Act No. 18-700 and transmitted to both Houses of Congress for its review. D.C. Law 18-350 became effective on March 31, 2011.

§ 1-309.12. Advisory Neighborhood Commissions — Joint meetings; involvement of neighborhood groups; service area coordinators; service area manager; citizen’s advisory mechanism.

(a) Commissions may meet jointly either formally or informally to deal more effectively with or respond to common issues and concerns. A Commissioner of

an individual Commission may represent and participate in a formal joint meeting only after the individual Commission has authorized the participation of the Commission in the joint meeting. For any official action taken in a formal joint meeting, the Commission shall specify in a resolution the scope of any individual Commissioner's participation. Action taken by individual Commissioners in an informal joint meeting shall follow the general direction of the Commission.

(b) Each Commission may involve representatives of other neighborhood groups in the work of its standing or special committees.

(c) The Mayor shall appoint a service area coordinator for each ward who shall act as the chairperson of the service area committee in that ward and shall coordinate all District government services at the ward level to residents of the ward. The head of each District government department or agency that delivers services at the ward level shall appoint a service area manager who shall oversee the day-to-day operations of the department or agency within the ward and shall represent that department or agency on the service area committee of that ward. The service area coordinators and managers shall work closely with the Commissions in their service area ward and shall provide them with any technical assistance necessary to the performance of their duties and responsibilities.

(d)(1) The Council may assist the individual Commissions in the following areas:

(A) Dispute resolution between the entities of the District government and the individual Commissions to facilitate the advisory process;

(B) Providing the training to Commissioners with respect to the procedures and content of District laws, including, but not limited to, laws governing zoning and licenses to sell alcohol; and

(C) Any other assistance necessary and feasible to enable the Commissions to perform their statutory duties.

(2) The District of Columbia Auditor shall provide assistance to the Commissions in the following areas:

(A) Review of quarterly financial reports to ensure compliance with current law;

(B) Monitoring of Commission expenditures and responses to inquiries from individual Commissions on the legality of proposed actual expenditures; and

(C) Training of Chairpersons and treasurers regarding required financial reports and submissions.

(3) The Mayor shall provide assistance to the Commissions in the following areas:

(A) Legal interpretations of statutes concerning or affecting the Commissions, or of issues or concerns affecting the Commissions. These interpretations are to be obtained from the Corporation Counsel and may be requested directly by any Commission;

(B) Liaison efforts between the individual Commissions and District government entities to ensure responsiveness to Commission requests and compliance with current law;

(C) Provision of government-owned or leased office space to any requesting Commission pursuant to § 1-309.13(q);

(D) Within 180 days of June 27, 2000, issue regulations to provide parking privileges for Commissioners while on official business; and

(E) Any other assistance necessary to ensure that a Commission is able to perform its statutory duties.

(e) Whenever a District government entity is required to establish a citizen's advisory mechanism, appointments to that mechanism shall be made in such a manner as to ensure as far as possible the equal representation on the mechanism of each electoral ward, provided that, members of the advisory mechanism possess skills relevant to the tasks for which the advisory mechanism was established and, in the event that the size of the advisory mechanism requires the appointment of more than one person per ward, ward appointments shall be made in such a manner so as to ensure as far as possible a fair representation of each Commission area.

(f) Each executive and independent agency, board, and commission of the District of Columbia and the Council shall assign an individual to act as an Advisory Neighborhood Commission Liaison who will serve as the primary contact for all Commissioners conducting official business with said government entity. The Office of Advisory Neighborhood Commissions shall maintain a list of the Liaisons.

(Oct. 10, 1975, D.C. Law 1-21, § 15, as added Mar. 26, 1976, D.C. Law 1-58, § 2, 22 DCR 5463; Mar. 6, 1991, D.C. Law 8-203, § 3(e), 37 DCR 8420; Jun. 27, 2000, D.C. Law 13-135, § 3(c), 47 DCR 2741.)

Section references. — This section is referred to in § 36-304.01.

Prior Codifications. — 1981 Ed., § 1-263. 1973 Ed., § 1-171k.

Effect of amendments. — D.C. Law 13-135 rewrote this section, which formerly read:

"(a) Commissions may meet jointly either formally or informally to deal more effectively with or respond to common issues and concerns. A Commissioner of an individual Commission may represent and participate in a formal joint meeting only after the individual Commission has authorized the participation of the Commission in the joint meeting. The Commissioner selected by the individual Commission to represent the Commission at a formal joint meeting may only vote on issues or concerns that have been discussed at a public meeting of the Commission and on which the Commission has voted to take a formal position. The Commissioner selected by the individual Commission to represent the Commission at a formal joint meeting shall, in the Commissioner's official capacity, follow the general direction of the individual Commission in all discussions at a formal joint meeting.

"(b) Each Commission may involve representatives of other neighborhood groups in the work of its standing or special committees.

"(c) The Mayor shall appoint a service area coordinator for each ward who shall act as the chairperson of the service area committee in that ward and shall coordinate all District government services at the ward level to residents of the ward. The head of each District government department or agency which delivers services at the ward level shall appoint a service area manager who shall oversee the day-to-day operations of the department or agency within the ward and shall represent that department or agency on the service area committee of that ward. The service area coordinators and managers shall work closely with the Commissions in their service area ward and shall provide them with any technical assistance necessary to the performance of their duties and responsibilities.

"(d)(1) The Council may assist the individual Commissions in the following areas:

"(A) Dispute resolution between the entities of the District government and the individual Commissions to facilitate the advisory process;

"(B) Providing the training to Commissioners with respect to the procedures and content of District laws, including, but not limited to, laws governing zoning and licenses to sell alcohol; and

"(C) Any other assistance necessary and fea-

sible to enable the Commissions to perform their statutory duties.

“(2) The District of Columbia Auditor shall provide assistance to the Advisory Neighborhood Commissions in the following areas:

“(A) Review of quarterly financial reports to ensure compliance with current law; and

“(B) Monitoring of Commission expenditures and responses to inquiries from individual Commissions on the legality of proposed actual expenditures.

“(3) The Mayor shall provide assistance to the Advisory Neighborhood Commissions in the following areas:

“(A) Legal interpretations of statutes concerning or affecting the Commissions, or of issues or concerns affecting the Commissions. These interpretations are to be obtained from the Corporation Counsel and may be requested directly by any Commission;

“(B) Liaison efforts between the individual Commissions and District government entities to ensure responsiveness to Commission requests and compliance with current law; and

“(C) Any other assistance necessary to ensure that a Commission is able to perform its statutory duties.

“(e) Whenever a District agency is required to establish a citizen’s advisory mechanism, appointments to that mechanism shall be made in such a manner as to ensure as far as possible the equal representation on the mechanism of each electoral ward, provided that, members of the advisory mechanism possess skills relevant to the tasks for which the advisory mechanism was established and, in the event that the size of the advisory mechanism requires the appointment of more than 1 person per ward, ward appointments shall be made in such a manner so as to ensure as far as possible a fair representation of each Commission area.”

Legislative history of Law 1-21. — For legislative history of D.C. Law 1-21, see Historical and Statutory Notes following § 1-309.01.

Legislative history of Law 1-58. — For legislative history of D.C. Law 1-58, see Historical and Statutory Notes following § 1-309.10.

Legislative history of Law 8-203. — For legislative history of D.C. Law 8-203, see Historical and Statutory Notes following § 1-309.14.

Legislative history of Law 13-135. — For Law 13-135, see notes following § 1-309.01.

§ 1-309.13. Advisory Neighborhood Commissions — Funds; audit of accounts; employees; financial reports; publications.

(a) Each Commission shall receive an annual allocation pursuant to § 1-207.38 to be distributed quarterly during the fiscal year, except that if the District’s appropriations act for the fiscal year has not become effective at the beginning of the fiscal year, each Commission shall receive its first quarterly allocation for the fiscal year if and when a continuing resolution is adopted by the Congress of the United States.

(b)(1) Each Commission shall by resolution designate a commercial bank, savings and loan association, credit union, or any combination thereof, which is insured by the government of the United States pursuant to 12 U.S.C. § 1811 et seq. and which is located within the District of Columbia, as a depository of all funds received by the Commission.

(2) Each Commission shall request a District of Columbia Tax Identification Number and include the phrase “District of Columbia Government” in each account name within 90 days after June 27, 2000.

(3) Each Commission shall establish no more than one checking or negotiable order of withdrawal account. The Commission may deposit into any savings account created pursuant to this section funds not immediately needed for the operation of the Commission.

(c) The treasurer of each Commission shall file with the Office of the District of Columbia Auditor (“Auditor”), within 30 days of assuming the office of treasurer or within 30 days of any change in the requested information, on a form provided by the Auditor, a statement that includes the treasurer’s name,

home and business address and telephone number, the location of the books and records of the Commission and the name and location of any depository of the Commission's funds, including account numbers. The treasurer and Chairperson shall file with the Auditor and maintain in force during their occupancy of their respective offices, a cash or surety bond in an amount and on a form satisfactory to the Auditor. Participation by a Commission in the Advisory Neighborhood Commission Security Fund established by § 1-309.14 shall satisfy the requirement of a cash or surety bond. The bylaws adopted by each Commission shall include a provision for filling in a timely manner a vacancy in the office of treasurer from among the remaining Commissioners. No expenditure shall be made by a Commission during a vacancy in the office of treasurer or at any time when a current and accurate statement and bond or its equivalent are not on file with the Auditor.

(d)(1) The Auditor shall audit the financial accounts of selected Commissions and maintain a database of financial information of each Commission for historical and expenditure trend analysis. The Auditor shall produce and submit to the Council a consolidated annual report of the financial activity of all the Commissions.

(2) The Auditor may audit the financial accounts of a Commission, at the discretion of the Auditor, upon the request by a member of the Council or a Commissioner of the Commission for which an audit is requested. The findings and recommendations of any audit shall be forwarded to the affected Commission, the Council, the Mayor, the Office of Advisory Neighborhood Commissions, the Office of the Inspector General, the Corporation Counsel, and any other law enforcement agency with jurisdiction over alleged improper conduct.

(3) In a case in which an Auditor's report details a violation of this part, the affected Commission shall, within 90 days, provide in writing to the Auditor, its response to each of the alleged infractions. If the audited Commission fails to respond within 90 days, its next scheduled quarterly allotments shall be forfeited until the response has been filed.

(e) Each Commission shall, by resolution, designate the location at which the Commission's books and records shall be maintained which shall, if the Commission has a regular office, be the Commission office. The Auditor shall have access to the books and records of each Commission pursuant to § 1-204.55(c), and may issue subpoenas to banking and financial institutions requiring the production of financial documents and statements pursuant to an audit conducted under this part. Such financial documents shall include, but not be limited to, bank statements, canceled checks, and signature cards. The Auditor may apply to the Superior Court of the District of Columbia for an order enforcing the subpoena. Any failure to obey the order of the court may be punished by the Superior Court as civil contempt.

(f)(1) Any expenditure of funds by a Commission shall be recorded by the treasurer in the Commission's books of accounts. No expenditure of any amount shall be made without the specific authorization of the Commission. The depository in which the Commission maintains a checking account shall be immediately notified of any change in Commission officers.

(2)(A) An expenditure made by check shall:

(i) Be signed by at least 2 officers of the Commission, one of whom shall be the treasurer or Chairperson;

(ii) Be pre-numbered;

(iii) Be issued in consecutive order; and

(iv) Bear the name of the Commission and "District of Columbia Government" on its face.

(B) Before signature, the check shall contain the:

(i) Date of payment;

(ii) Name of the payee; and

(iii) Amount of the payment.

(C) No check may be made payable to cash.

(3) A Commission may provide reimbursement for an authorized purchase made with a personal credit card, debit card, or cashier's check that is documented with a receipt, a copy of which shall be submitted to the Commission.

(g) Disbursements of Commission funds exceeding \$50 for personal service expenditures shall be specifically approved by the Commission at a public meeting prior to the disbursement. The approval shall be recorded in the minutes of the Commission meeting. Any personal services payment shall name the person who is to receive the payments, the rate of compensation, and the maximum hours of service, if less than full-time compensation. If an expenditure is made without the required authorization of the Commission, the expenditure shall be deemed to be a personal expense of the Commissioner who authorized the payment, unless the Commission subsequently approves the expenditure within 90 days. If the Commission fails to approve the expense within 90 days, the Corporation Counsel, upon notification by the Auditor, shall institute any actions necessary to recover Commission funds.

(h) Each Commission may establish a petty cash fund not to exceed \$200 at any one time in accordance with procedures established for imprest funds by the D.C. Controller. The fund shall be reimbursed by the treasurer upon presentation of appropriate supporting documents. The treasurer may disburse to another Commissioner or employee of the Commission an amount not in excess of \$200 for authorized Commission expenditures through a Commission-established petty cash fund. A record of disbursements from the petty cash fund shall be kept by the treasurer in a manner consistent with other accounts of the Commission.

(i) A Commission shall maintain its accounts on a fiscal year basis beginning October 1 and ending the following September 30.

(j)(1) The treasurer of a Commission shall prepare a quarterly financial report on a form provided by the Auditor. The financial report shall be presented to the Commission for its consideration at a Commission meeting within 45 days after the end of the quarter. A copy of the approved financial report, signed by the Chairperson, the secretary, and the treasurer, shall be filed, along with a record of the vote adopting the report, with the Auditor within 15 days of approval. Each quarterly report shall include copies of canceled checks, bank statements, grant request letters and grant disbursements, invoices and receipts, executed contracts, details about all contribu-

tions received during the time period covered by the quarterly report, the minutes of all meetings indicating the Commission's approval of disbursements during the time period covered by the quarterly report, and certification of the Commission's approval of the quarterly report signed by the Commission's Secretary. The Commission shall make available for on-site review to the Auditor, upon the Auditor's request, originals of documents required to be submitted with quarterly financial reports pursuant to this section. A financial report shall be available for public inspection during the normal office hours of the Commission.

(2) No quarterly allotment shall be forwarded to a Commission until all reports of financial activity for the quarters preceding the immediate previous quarter are approved by the Auditor. If a Commission fails to file 3 consecutive quarterly reports that meet the requirements of paragraph (1) of this subsection, it shall relinquish its checkbook to the Auditor, whose permission will be needed for any expenditure made by check until the Commission files the required financial reports. The Mayor, upon the request of the Auditor, may issue official instructions to any pertinent banking institution to freeze accounts held by a Commission that has not complied with this paragraph.

(3) If, on the last day of the fiscal year, a Commission has not received a quarterly allotment because it failed to file a quarterly report approved by the Auditor, the Commission shall forfeit the unclaimed allotment or allotments and the funds shall be returned to the District's General Fund.

(k) Reserved.

(l)(1) A Commission shall expend funds received through the annual allocation received pursuant to subsection (a) of this section, or other donated funds, for public purposes within the Commission area or for the functioning of the Commission office, including staff salaries, Commissioner training, property liability insurance, and nominal refreshments at Commission meetings. Expenditures may be in the form of grants by the Commission for public purposes within the Commission area pursuant to subsection (m) of this section. A Commission may expend its funds for Commissioner training on subjects pertaining to their official duties when such training is not available from government sources. A Commission may expend its funds to purchase insurance or obtain indemnification against any loss in connection with the assets of the Commission or any liability in connection with the activities of the Commission, such insurance or indemnification to be purchased or obtained in such amounts and from such sources as the Commission deems to be appropriate. Funds may be used to pay the local transportation expenses of a Commissioner if the Commissioner is officially representing the Commission or a committee of the Commission at public hearings or meetings or is engaged in official Commission business.

(2) Funds allocated to the Commissions may not be used for a purpose that involves partisan political activity, personal subsistence expenses, Commissioner compensation, meals, legal expenses other than for Commission representation before an agency, board, or commission of the District government, or travel outside of the Washington metropolitan area.

(m)(1) A grant may not be awarded unless the grant is awarded pursuant to a vote of the Commission at a public meeting following the public presentation

of the grant request. A Commission may approve grants only to organizations that are public in nature and benefit persons who reside or work within the Commission area. The services provided by the grantee organization must not be duplicative of any that are already performed by the District government.

(2) An applicant for a grant must submit an application in writing to the Commission. The application shall contain:

(A) A description of the proposed project for which the grant is requested;

(B) A statement of expected public benefits; and

(C) The total cost of the proposed project, including other sources of funding, if any.

(3) Within 60 days following the issuance of a grant, the grant recipient shall forward to the Commission a statement as to the use of the funds consistent with the grant application, complete with receipts which support the expenditures.

(4) Grant disbursements shall be included in quarterly financial reports submitted to the Auditor.

(n) The Mayor may, pursuant to subchapter I of Chapter 5 of Title 2, issue rules to implement the provisions of this section. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(o) A Commission may employ any person necessary to provide administrative support to the Commission. A Commission shall establish position descriptions for employees that shall, at a minimum, broadly identify the qualifications and duties of the employees. A Commission employee shall serve at the pleasure of the Commission. An employee of the Commission shall be considered an employee of the District of Columbia government for the purposes of subchapters XXI, XXII, and XXIII of chapter 6 of Title 1. Except for out of pocket expenses approved by the Commission, Commissioners shall not be compensated for personal services rendered on behalf of the Commission.

(p) Any Commissioner within an individual Commission shall have equal access to the Commission office and its records in order to carry out Commission duties and responsibilities. Moreover, any person has a right to inspect, and at his or her discretion, to copy any public record of the Commission, except as otherwise expressly provided by § 2-534, in accordance with reasonable procedures that shall be issued by the Commission after notice and comment concerning the time and place of access.

(q) Upon the request of a Commission, evidenced by a properly adopted resolution signed or transmitted by the Chairperson and secretary, the Mayor shall provide that Commission with suitable office space in a District-owned or leased building. The Mayor shall acknowledge receipt of the resolution within 15 days and shall provide the Commission with a list of available office space within 45 days thereafter. The space shall be a minimum of 250 square feet and shall be the sole office of the Commission. The space shall be located within the Commission's boundaries. If no such space is available, then the space shall be

located within the ward boundaries of the Commission. If District-owned or leased office space cannot be provided, the Mayor may seek to reprogram funds up to \$600 per month to cover the rental of office space for the respective Commission. Furnishings, equipment, telephone service, and supplies for the office space shall be provided from the Commission's funds. There shall be a written lease between the Mayor or District agency and the Commission, which shall specify what operating costs, such as utilities, janitorial services, and security, shall be paid by the Commission.

(Oct. 10, 1975, D.C. Law 1-21, § 16, as added Mar. 26, 1976, D.C. Law 1-58, § 2, 22 DCR 5465; Oct. 26, 1977, D.C. Law 2-30, § 2(c), 24 DCR 3723; Mar. 6, 1991, D.C. Law 8-203, § 3(f), 37 DCR 8420; Mar. 16, 1993, D.C. Law 9-190, § 2, 39 DCR 9003; Feb. 5, 1994, D.C. Law 10-68, § 3(b), 40 DCR 6311; Apr. 9, 1997, D.C. Law 11-198, § 401, 43 DCR 4569; Jul. 24, 1998, D.C. Law 12-140, § 2, 45 DCR 2978; Mar. 26, 1999, D.C. Law 12-175, § 1702, 45 DCR 7193; Jun. 27, 2000, D.C. Law 13-135, § 3(d), 47 DCR 2741; Mar. 6, 2002, D.C. Law 14-80, § 2(a), 48 DCR 11268; Jan. 29, 2008, D.C. Law 17-79, § 2, 54 DCR 11644.)

Cross references. — Criminal justice supervisory board, promulgation of rules of procedure, see § 3-904.

Section references. — This section is referred to in §§ 1-309.10, 1-309.11, 1-309.12, and 36-304.01.

Prior Codifications. — 1981 Ed., § 1-264. 1973 Ed., § 1-711.

Effect of amendments. — D.C. Law 13-135 rewrote subsecs. (b) through (q), which formerly read:

"(b) Each Commission shall by resolution designate a commercial bank, savings and loan association, credit union, or any combination thereof, which is insured by the government of the United States pursuant to the Federal Deposit Insurance Act, approved September 21, 1950 (87 Stat. 873; 12 U.S.C. 1811 et seq.), and which is located within the District of Columbia, as a depository of all funds received by the Commission. Each Commission shall establish no more than one checking or negotiable order of withdrawal account. The Commission may deposit into any savings account created pursuant to this section funds not immediately needed for the operation of the Commission.

"(c) The treasurer of each Commission shall file with the Office of the District of Columbia Auditor, within 30 days of assuming the office of treasurer or within 30 days of any change in the requested information, on a form provided by the Auditor, a statement that includes the treasurer's name, home and business address and telephone number, the location of the books and records of the Commission and the name and location of any depository of the Commission's funds, including account numbers. The treasurer shall file with the District of Columbia Auditor and maintain in force during the trea-

surer's occupancy of the office a cash or surety bond in an amount and on a form satisfactory to the Auditor. Participation by a Commission in the Advisory Neighborhood Commission Security Fund established by § 1-264.1 shall satisfy the requirement of a cash or surety bond. The bylaws adopted by each Commission shall include a provision for filling in a timely manner a vacancy in the office of treasurer from among the remaining Commissioners. No expenditure shall be made by a Commission during a vacancy in the office of treasurer or at any time when a current and accurate statement and bond or its equivalent are not on file with the District of Columbia Auditor.

"(d) The District of Columbia Auditor shall audit the financial accounts of selected Commissions and maintain a database of financial information of each Commission for historical and expenditure trend analysis. The Auditor shall produce and submit to the Council a consolidated annual report of the financial activity of all the Commissions. The Auditor may audit the financial accounts of a Commission, at the discretion of the Auditor, upon the request by a member of the Council or a Commissioner of the Commission for which an audit is requested.

"(e) Each Commission shall, by resolution, designate the location at which the Commission's books and records shall be maintained which shall, if the Commission has a regular office, be the Commission office. The District of Columbia Auditor shall have access to the books and records of each Commission pursuant to § 47-117(c), and may issue subpoenas to banking and financial institutions requiring the production of financial documents and statements pursuant to an audit conducted

under §§ 1-252 through 1-264.1. Such financial documents shall include, but not be limited to, bank statements, cancelled checks, and signature cards. The District of Columbia Auditor may apply to the Superior Court of the District of Columbia for an order enforcing the subpoena. Any failure to obey the order of the court may be punished by the Superior Court as civil contempt.

“(f) Any expenditure of funds by a Commission shall be authorized in writing by the treasurer or Chairman and recorded by the treasurer in the Commission’s books of accounts. No expenditure of any amount shall be made without the specific authorization of the Commission. Any expenditure made by check shall be signed by at least 2 officers of the Commission, one of whom shall be the treasurer or Chairman. The check shall, prior to signature, contain the date of payment, the name of the payee, and the amount of the payment. No check may be made payable to cash. Any check shall be pre-numbered, shall bear the name of the Commission on its face, and shall be issued in consecutive order. The depository in which the Commission maintains a checking account shall be immediately notified of any change in Commission officers.

“(g) Disbursements of Commission funds exceeding \$50 for personal service expenditures shall be specifically approved by the Commission at a public meeting prior to the disbursement. The approval shall be recorded in the minutes of the Commission meeting. Any personal services payment shall name the person who is to receive the payments, the rate of compensation, and the maximum hours of service, if less than full-time compensation. If an expenditure required to be approved pursuant to this subsection is made without the required authorization of the Commission, the expenditure shall be deemed to be a personal expense of the officer who authorized the payment, unless the Commission subsequently approves the expenditure.

“(h) Each Commission may establish a petty cash fund not to exceed \$50 at any one time in accordance with procedures established for imprest funds by the D.C. Controller. The fund shall be reimbursed by the treasurer upon presentation of appropriate supporting documents. The treasurer may disburse to another Commission member or employee of the Commission an amount not in excess of \$50 for authorized Commission expenditures through a Commission-established petty cash fund. A record of disbursements from the petty cash fund shall be kept by the treasurer in a manner consistent with other accounts of the Commission.

“(i) A Commission shall maintain its accounts on a fiscal year basis beginning October 1 and ending the following September 30.

“(j)(1) The treasurer of a Commission shall prepare a quarterly financial report on a form provided by the Auditor. The financial report shall be presented to the Commission for its consideration at a public meeting of the Commission within 30 days of the end of the quarter. A copy of the approved financial report, signed by the Chairman, the secretary, and the treasurer, shall be filed, along with a record of the vote adopting the report, with the District of Columbia Auditor within 7 days of approval. A financial report shall be available for public inspection during the normal office hours of the Commission.

“(2) No quarterly allotment shall be forwarded to a Commission until all reports of financial activity for the quarters preceding the immediate previous quarter are approved by the Auditor.

“(3) If, on the last day of the fiscal year, a Commission has not received a quarterly allotment because it failed to file a quarterly report approved by the Auditor, the Commission shall forfeit the unclaimed allotment or allotments and the funds shall return to the District’s General Fund.

“(4) This subsection shall take effect beginning in fiscal year 1999.

“(k) Commissions may pool Commission funds in accordance with agreements adopted by their constituent Commissions.

“(l) A Commission shall expend funds received through the annual allocation received pursuant to subsection (a) of this section, or other donated funds, for public purposes within the Commission area or for the functioning of the Commission office, including staff salaries and nominal refreshments at Commission meetings. A Commission may expend its funds for public purposes outside of the Commission area as authorized pursuant to subsection (k) of this section. Expenditures may be in the form of grants by the Commission for public purposes within the Commission area pursuant to subsection (m) of this section. Funds allocated to the Commissions may not be used for a purpose that involves partisan political activity, personal subsistence expenses, Commissioner compensation, meals, legal expenses other than for Commission representation before an agency, board, or commission of the District government, or travel outside of the Washington metropolitan area. Funds may be used to pay the local transportation expenses of a Commissioner if the Commissioner is officially representing the Commission or a committee of the Commission at public hearings or meetings or is engaged in official Commission business.

“(m) A grant approved by a Commission shall provide a benefit that is public in nature and that benefits persons who reside or work within the Commission area. A grant to an individual shall be prohibited as a non-public purpose

expenditure. A Commission shall adopt guidelines for the consideration and award of grants that shall include a provision that requires the proposed grantee to present the request for a grant at a public meeting of the Commission. A grant may not be awarded unless the grant is awarded pursuant to a vote of the Commission at a public meeting. The award of a grant by a Commission shall not be conditioned on support for a position taken by the Commission.

"(n) The Mayor may, pursuant to subchapter I of Chapter 15 of Title 1, issue rules to implement the provisions of this section. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

"(o) A Commission may employ any person necessary to provide administrative support to the Commission. A Commission shall establish position descriptions for employees that shall, at a minimum, broadly identify the qualifications and duties of the employees. A Commission employee shall serve at the pleasure of the Commission. An employee of the Commission shall be considered an employee of the District of Columbia government for the purposes of subchapters XXII and XXIII of Chapter 6 of this title.

"(p) Any Commissioner within an individual Commission shall have equal access to the Commission office in order to carry out Commission duties and responsibilities.

"(q) Upon the request of a Commission, evidenced by a properly adopted resolution signed or transmitted by the Chairman and Secretary, the Mayor shall provide that Commission with suitable office space in a District-owned building. The space shall be a minimum of 250 square feet and shall be the sole office of the Commission. The space shall be located within the Commission's boundaries. If no such space is available then the space shall be located within the ward boundaries of the Commission. Furnishings, equipment, telephone service, and supplies for the office space shall be provided from the Commission's funds. There shall be a written lease between the Mayor or District agency and the Commission, which shall specify what operating costs, such as utilities, janitorial services, and security, shall be paid by the Commission."

D.C. Law 14-80, in subsec. (j)(1), rewrote the fourth sentence which had read: "Each quarterly report must include copies of canceled checks, bank statements, grant request letters and grant disbursements, invoices and receipts, executed contracts, details about all contributions received during the time period

covered by the quarterly report, and the minutes of the meeting indicating the Commission's approval of disbursements reported in the quarterly report."

D.C. Law 17-79 rewrote subsec. (f) which had read as follows: "(f) Any expenditure of funds by a Commission shall be recorded by the treasurer in the Commission's books of accounts. No expenditure of any amount shall be made without the specific authorization of the Commission. Any expenditure made by check shall be signed by at least 2 officers of the Commission, one of whom shall be the treasurer or Chairperson. The check shall, prior to signature, contain the date of payment, the name of the payee, and the amount of the payment. No check may be made payable to cash. Any check shall be pre-numbered, shall bear the name of the Commission and 'District of Columbia Government' on its face, and shall be issued in consecutive order. The depository in which the Commission maintains a checking account shall be immediately notified of any change in Commission officers."

Temporary Amendment of Section. —

For temporary (225 day) amendment of section, see § 401 of Fiscal Year 1997 Budget Support Temporary Amendment Act of 1996 (D.C. Law 11-226, April 9, 1997, law notification 44 DCR 2584).

For temporary (225 day) amendment of section, see § 2 of Advisory Neighborhood Commissions Management Control and Funding Temporary Amendment Act of 1999 (D.C. Law 12-276, April 27, 1999, law notification 46 DCR 4282).

For temporary (225 day) amendment of section, see § 2 of Advisory Neighborhood Commissions Management Control Temporary Amendment Act of 2000 (D.C. Law 13-93, April 12, 2000, law notification 47 DCR 2844).

For temporary (225 day) amendment of section, see § 2(a) of Advisory Neighborhood Commission Temporary Amendment Act of 2001 (D.C. Law 14-21, September 6, 2001, law notification 48 DCR 9091).

Section 2 of D.C. Law 16-261 added subsec. (f-1) to read as follows: "(f-1) A Commission may provide reimbursements for authorized and properly documented purchases made with credit cards."

Section 4(b) of D.C. Law 16-261 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 401 of the Fiscal Year 1997 Budget Support Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-2, February 19, 1997, 44 DCR 1590).

For temporary (90 day) amendment of section, see § 1302 of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-

401, July 13, 1998, 45 DCR 4794) and § 1302 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

For temporary (90 day) amendment of section, see § 2 of the Advisory Neighborhood Commissions Management Control and Funding Emergency Amendment Act of 1998 (D.C. Act 12-619, January 22, 1999, 46 DCR 1339).

For temporary (90-day) amendment of section, see § 1302 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1999 (D.C. Act 13-41, March 31, 1999, 46 DCR 3446).

For temporary (90-day) amendment of section, see § 2 of the Advisory Neighborhood Commissions Management Control and Funding Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-67, May 10, 1999, 46 DCR 4471).

For temporary (90-day) amendment of section, see § 2 of the Advisory Neighborhood Commissions Management Control Emergency Amendment Act of 1999 (D.C. Act 13-207, December 8, 1999, 46 DCR 10470).

For temporary (90-day) amendment of section, see § 2 of the Advisory Neighborhood Commissions Management Control Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-317, April 17, 2000, 47 DCR 2877).

For temporary (90 day) amendment of section, see § 2(a) of Advisory Neighborhood Commission Emergency Amendment Act of 2001 (D.C. Act 14-56, May 2, 2001, 48 DCR 4410).

For temporary (90 day) amendment of section, see § 2(a) of Advisory Neighborhood Commission Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-104, July 23, 2001, 48 DCR 7149).

For temporary (90 day) amendment of section, see § 2 of Advisory Neighborhood Commissions Clarification Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-577, December 19, 2006, 54 DCR 33).

For temporary (90 day) amendment of section, see § 2 of Advisory Neighborhood Commissions Clarification Emergency Amendment Act of 2007 (D.C. Act 17-157, October 18, 2007, 54 DCR 10924).

For temporary (90 day) amendment of section, see § 2 of Advisory Neighborhood Commissions Clarification Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-248, January 23, 2008, 55 DCR 1253).

Legislative history of Law 1-21. — For legislative history of D.C. Law 1-21, see Historical and Statutory Notes following § 1-309.01.

Legislative history of Law 1-58. — For legislative history of D.C. Law 1-58, see Historical and Statutory Notes following § 1-309.10.

Legislative history of Law 2-30. — For legislative history of D.C. Law 2-30, see Historical and Statutory Notes following § 1-309.10.

Legislative history of Law 8-203. — For legislative history of D.C. Law 8-203, see Historical and Statutory Notes following § 1-309.14.

Legislative history of Law 9-190. — Law 9-190, the “Advisory Neighborhood Commission Office Space Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-274, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 6, 1992, and November 4, 1992, respectively. Signed by the Mayor on November 23, 1992, it was assigned Act No. 9-311 and transmitted to both Houses of Congress for its review. D.C. Law 9-190 became effective on March 16, 1993.

Legislative history of Law 10-68. — For legislative history of D.C. Law 10-68, see Historical and Statutory Notes following § 1-309.05.

Legislative history of Law 11-198. — Law 11-198, the “Fiscal Year 1997 Budget Support Act,” was introduced in Council and assigned Bill No. 11-741, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 19, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 26, 1996, it was assigned Act No. 11-360 and transmitted to both Houses of Congress for its review. D.C. Law 11-198 became effective on April 9, 1997.

Legislative history of Law 12-140. — Law 12-140, the “Advisory Neighborhood Commissions Act of 1975 Financial Reporting Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-262, which was referred to Committee on Government Operations. The Bill was adopted on first and second readings on March 3, 1998, and April 7, 1998, respectively. Signed by the Mayor on April 22, 1998, it was assigned Act No. 12-342 and transmitted to both Houses of Congress for the review. D.C. Law 12-140 became effective on July 24, 1998.

Legislative history of Law 12-175. — Law 12-175, the “Fiscal Year 1999 Budget Support Act of 1998,” was introduced in Council and assigned Bill No. 12-618, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 5, 1998, and June 2, 1998, respectively. Signed by the Mayor on June 23, 1998, it was assigned Act No. 12-399 and transmitted to both Houses of Congress for its review. D.C. Law 12-175 became effective on March 26, 1999.

Legislative history of Law 13-135. — For Law 13-135, see notes following § 1-309.01.

Legislative history of Law 14-80. — Law 14-80, the “Advisory Neighborhood Commissions Amendment Act of 2001,” was introduced in Council and assigned Bill No. 14-185, which was referred to the Committee on Public Services. The Bill was adopted on first and second

readings on October 2, 2001, and November 6, 2001, respectively. Signed by the Mayor on November 29, 2001, it was assigned Act No. 14-200 and transmitted to both Houses of Congress for its review. D.C. Law 14-80 became effective on March 6, 2002.

Legislative history of Law 17-79. — Law 17-79, the “Advisory Neighborhood Commissions Clarification Amendment Act of 2007”,

was introduced in Council and assigned Bill No. 17-102 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on October 23, 2007, and November 6, 2007, respectively. Signed by the Mayor on November 16, 2007, it was assigned Act No. 17-178 and transmitted to both Houses of Congress for its review. D.C. Law 17-79 became effective on January 29, 2008.

§ 1-309.14. Advisory Neighborhood Commission Security Fund.

(a) There is established, for the purpose of insuring Advisory Neighborhood Commissions against unauthorized expenditures or loss of funds, an Advisory Neighborhood Commission Security Fund (“Fund”) to be held in the custody of a Board of Trustees (“Trustees”) composed of the Secretary of the District of Columbia, the General Counsel to the Council of the District of Columbia, and the District of Columbia Auditor. The Executive Director of the Office of Advisory Neighborhood Commissions shall serve as a non-voting Trustee. The Trustees shall have exclusive authority and discretion in its fiduciary capacity to manage and control the Fund. The Fund shall not be held liable for any loss as the result of an expenditure authorized by a vote of a Commission.

(b) Each Advisory Neighborhood Commission may become a participant of the Fund upon payment to the Fund of an annual contribution at the beginning of the fiscal year in an amount to be determined by the Trustees. A Commission shall be eligible to participate in the Fund if the treasurer and the Chairperson of the Commission agree, on a form to be provided by the Trustees, to be personally liable to the Fund for any sum paid out by the Fund as a result of the treasurer or Chairperson’s wrongful misappropriation or loss of Commission monies.

(c) If, in any fiscal year, the Trustees determine that there are sufficient assets in the Fund to cover reasonably expected losses, the Trustees may waive or delay monetary contributions for any Commission that made a contribution in the most recent fiscal year for which the Fund required a contribution.

(d) If a participating Commission suffers a monetary loss that may be reimbursed by the Fund, the Commission may request reimbursement upon a written application form provided by the Trustees. The application form shall be signed by a majority of the members of the participating Commission on a form provided by the Trustees. The Trustees shall consider the request at a public meeting held in accordance with § 2-504. Notice of the meeting shall be published in the District of Columbia Register no later than 30 days prior to the meeting and shall be sent by registered mail to the Chairperson of the Commission and the treasurer of the Commission at the time that the loss was incurred.

(e) Assets of the Fund shall be held in an interest bearing account located in the District of Columbia.

(f) The Fund shall publish an annual financial report in the District of Columbia Register no later than 90 days after the end of each fiscal year.

(Oct. 10, 1975, D.C. Law 1-21, § 17, as added Mar. 6, 1991, D.C. Law 8-203, § 3(g), 37 DCR 8420; Feb. 5, 1994, D.C. Law 10-68, § 3(c), 40 DCR 6311; July 27, 2000, D.C. Law 13-135, § 4, 47 DCR 2741.)

Section references. — This section is referred to in §§ 1-309.13 and 36-304.01.

Prior Codifications. — 1981 Ed., § 1-264.1.

Effect of amendments. — D.C. Law 13-135, in subsec. (a) inserted the second sentence relating to the Executive Director serving as a non-voting Trustee; in subsec. (b), rewrote the second sentence, which formerly read:

“An Advisory Neighborhood Commission shall be eligible to participate in the Fund if the treasurer of the Commission agrees, on a form to be provided by the Trustees, to be personally liable to the Fund for any sum paid out by the Fund as a result of the treasurer’s wrongful misappropriation or loss of Commission monies.”;

and in subsec. (d), substituted “Chairperson” for “Chairman”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3 of Advisory Neighborhood Commissions Management Control and Funding Temporary Amendment Act of 1999 (D.C. Law 12-276, April 27, 1999, law notification 46 DCR 4282).

For temporary (225 day) amendment of section, see § 3 of Advisory Neighborhood Commissions Management Control Temporary Amendment Act of 2000 (D.C. Law 13-93, April 12, 2000, law notification 47 DCR 2844).

Emergency legislation. — For temporary amendment of section, see § 3 of the Advisory Neighborhood Commissions Management Control and Funding Emergency Amendment Act

of 1998 (D.C. Act 12-619, January 22, 1999, 46 DCR 1339).

For temporary (90-day) amendment of section, see § 3 of the Advisory Neighborhood Commissions Management Control and Funding Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-67, May 10, 1999, 46 DCR 4471).

For temporary (90-day) amendment of section, see § 3 of the Advisory Neighborhood Commissions Management Control Emergency Amendment Act of 1999 (D.C. Act 13-207, December 8, 1999, 46 DCR 10470).

For temporary (90-day) amendment of section, see § 3 of the Advisory Neighborhood Commissions Management Control Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-317, April 17, 2000, 47 DCR 2877).

Legislative history of Law 8-203. — Law 8-203 was introduced in Council and assigned Bill No. 8-626, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 20, 1990, and December 4, 1990, respectively. Signed by the Mayor on December 14, 1990, it was assigned Act No. 8-277 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-68. — For legislative history of D.C. Law 10-68, see Historical and Statutory Notes following § 1-309.05.

Legislative history of Law 13-135. — For Law 13-135, see notes following § 1-309.01.

§ 1-309.15. Office of Advisory Neighborhood Commissions; appointment of Executive Director.

(a) There is hereby established an Office of Advisory Neighborhood Commissions (“Office”) to provide technical, administrative, and financial reporting assistance to the Advisory Neighborhood Commissions. Subject to appropriations beginning in Fiscal Year 2001, the Office shall be funded by an annual budget allocation. The Office is intended to support the efforts of Advisory Neighborhood Commissions and is not empowered to direct or supervise the actions of Commissions.

(b) The Office shall be headed by an Executive Director who shall be appointed by the Council.

(c) Funds may be transferred from the Office of Advisory Neighborhood Commissions through an intra-District transfer for the operations of the Office.

(Oct. 10, 1975, D.C. Law 1-21, § 18, as added June 27, 2000, D.C. Law 13-135, § 3(e), 47 DCR 2741; Mar. 6, 2002, D.C. Law 14-80, § 2(b), 48 DCR 11268.)

Effect of amendments. — D.C. Law 14-80 rewrote subsec. (b) and added subsec. (c).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(b) of Advisory Neighborhood Commission Temporary Amendment Act of 2001 (D.C. Law 14-21, September 6, 2001, law notification 48 DCR 9091).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(b) of Advisory Neighborhood Commission Emer-

gency Amendment Act of 2001 (D.C. Act 14-56, May 2, 2001, 48 DCR 4410).

For temporary (90 day) amendment of section, see § 2(b) of Advisory Neighborhood Commission Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-104, July 23, 2001, 48 DCR 7149).

Legislative history of Law 13-135. — For Law 13-135, see notes following § 1-309.01.

Legislative history of Law 14-80. — For Law 14-80, see notes following § 1-309.13.

Part B

ADDITIONAL PERIOD FOR CIRCULATION OF PETITIONS.

§ 1-309.31. Definitions. [Repealed].

Repealed.

(1973 Ed., § 1-171m; June 19, 1976, D.C. Law 1-72, § 2, 23 DCR 574; June 27, 2000, D.C. Law 13-135, § 5, 47 DCR 2741.)

Prior Codifications. — 1981 Ed., § 1-265. 1973 Ed., § 1-171m.

Legislative history of Law 1-72. — Law 1-72 was introduced in Council and assigned Bill No. 1-233, which was referred to the Advisory Committee. The Bill was adopted on first and second readings on March 9, 1976 and

March 23, 1976, respectively. Signed by the Mayor on April 26, 1976, it was assigned Act No. 1-108 and transmitted to both Houses of Congress for its review.

Legislative history of Law 13-135. — For Law 13-135, see notes following § 1-309.01.

§ 1-309.32. Supplementary petitions.

(a) As soon as possible after June 19, 1976, but in no case more than 5 days after such date, the Board shall:

(1) Make available to any resident of a Commission area copies of petition forms for collecting signatures of registered qualified electors in such area; and

(2) Publish in the District of Columbia Register, and post in conspicuous places in each Commission area, the number of registered qualified electors in such Commission area.

(b) Upon certification by the Board to the Chairman of the Council that 5 percent of the registered qualified electors of a Commission area have signed a petition calling for the establishment of an Advisory Neighborhood Commission in such area, the Council shall then establish, by resolution, a nonpartisan elected Advisory Neighborhood Commission for such Commission area, with its members to be elected from the single-member districts established for such Commission area. Nothing in this section shall be construed to permit an individual to sign more than 1 petition for the establishment of an Advisory Neighborhood Commission.

(June 19, 1976, D.C. Law 1-72, § 3, 23 DCR 575.)

Prior Codifications. — 1981 Ed., § 1-266. 1973 Ed., § 1-171n.

legislative history of D.C. Law 1-72, see Historical and Statutory Notes following § 1-309.31.

Legislative history of Law 1-72. — For

§ 1-309.33. Qualifications of members.

Members of the Advisory Neighborhood Commissions which are established pursuant to the provisions of this part shall:

- (1) Be nominated in the manner prescribed in § 1-309.05(b); and
- (2) Have those qualifications specified in § 1-309.05(a).

(June 19, 1976, D.C. Law 1-72, § 4, 23 DCR 576.)

Prior Codifications. — 1981 Ed., § 1-267. 1973 Ed., § 1-171o.

legislative history of D.C. Law 1-72, see Historical and Statutory Notes following § 1-309.31.

Legislative history of Law 1-72. — For

§ 1-309.34. Election of members; term of office; vacancies; change in residency.

(a) Following the initial elections of members of Advisory Neighborhood Commissions in November 1976, subsequent elections of such members occurred in November of odd-numbered calendar years through 1981. Beginning in 1984, general elections of members of Advisory Neighborhood Commissions shall take place on the 1st Tuesday after the 1st Monday in November of each even-numbered calendar year.

(b)(1) Each member of an Advisory Neighborhood Commission shall serve for a term of 2 years which shall begin at noon on the 2nd day of January next following the date of election of such member, or at noon on the day after the date the Board certifies the election of such member, whichever is later.

(2) Repealed.

(3) Each member of an Advisory Neighborhood Commission holding office on August 2, 1983, shall continue in office until noon on the 2nd day of January next following the date of the election provided for in paragraph (2) [repealed] of this subsection.

(c) The provisions of subsections (c) [repealed], (d), and (e) of § 1-309.06 shall apply to members elected to such Advisory Neighborhood Commissions.

(June 19, 1976, D.C. Law 1-72, § 5, 23 DCR 576; Aug. 2, 1983, D.C. Law 5-17, § 3, 30 DCR 3196; Sept. 26, 1984, D.C. Law 5-116, § 2, 31 DCR 4018.)

Cross references. — Elections, board of education, see § 1-1001.10.

Prior Codifications. — 1981 Ed., § 1-268. 1973 Ed., § 1-171p.

Legislative history of Law 1-72. — For legislative history of D.C. Law 1-72, see Historical and Statutory Notes following § 1-309.31.

Legislative history of Law 5-17. — For legislative history of D.C. Law 5-17, see Historical and Statutory Notes following § 1-309.06.

Legislative history of Law 5-116. — For

legislative history of D.C. Law 5-116, see Historical and Statutory Notes following § 1-207.38.

References in text. — “Paragraph (2) of this subsection”, which established the term of members elected in 1984, referred to in (b)(3), was repealed by D.C. Law 5-116, § 3(b), effective September 26, 1984.

Section 1-309.06(c), referred to in subsection (c), was repealed by D.C. Law 4-14, § 2(b), effective June 23, 1981.

CASE NOTES

ANALYSIS

Due process of law.
Review of election contests.

Due process of law.

Burden placed on candidates to learn when certification of election will occur, for purposes of seeking judicial review, was consistent with due process notice requirements. D.C. Code 1981, §§ 1-257, 1-258, 1-260(a), 1-268(a, b), 1-1315(b); U.S. Const. Amend. 5. *White v. District of Columbia Bd. of Elections & Ethics*, 537 A.2d 1133, 1988 D.C. App. LEXIS 45 (1988).

Review of election contests.

Court of Appeals lacked jurisdiction to consider candidate's petition to set aside election

for advisory neighborhood commissioner for single member district, as result of candidate's failure to file petition within seven days of certification of election by Board of Elections and Ethics, absent any record basis upon which it could reasonably be concluded that candidate was misled by Board as to certification date or that candidate or his counsel was unaware of certification until after seven-day period had expired; candidate asserted, without providing appropriate affidavit, that unnamed employee of Board misinformed him as to certification date. D.C. Code 1981, §§ 1-257, 1-258, 1-260(a), 1-268(a, b), 1-1315(b). *White v. District of Columbia Bd. of Elections & Ethics*, 537 A.2d 1133, 1988 D.C. App. LEXIS 45 (1988).

§ 1-309.35. Applicability of other provisions of law.

Except to the extent specifically provided in this part, those provisions of the Advisory Neighborhood Commissions Act of 1975, including the amendments made by that Act, and all other provisions of law relating to Advisory Neighborhood Commissions, shall apply to the Advisory Neighborhood Commissions established pursuant to the provisions of this part.

(June 19, 1976, D.C. Law 1-72, § 6, 23 DCR 577.)

Prior Codifications. — 1981 Ed., § 1-269. 1973 Ed., § 1-171q.

Legislative history of Law 1-72. — For legislative history of D.C. Law 1-72, see Historical and Statutory Notes following § 1-309.31.

References in text. — The Advisory Neighborhood Commissions Act of 1975, referred to in this section, is the Act of October 10, 1975, D.C. Law 1-21.

§ 1-309.36. Regulations.

The Board is authorized to adopt, amend, repeal, and enforce such regulations as are necessary to carry out the provisions of this part, and is further directed to take such steps as are necessary to ensure that the election provided for under this part is held in an efficient manner.

(June 19, 1976, D.C. Law 1-72, § 8, 23 DCR 578.)

Prior Codifications. — 1981 Ed., § 1-270. 1973 Ed., § 1-171r.

Legislative history of Law 1-72. — For

legislative history of D.C. Law 1-72, see Historical and Statutory Notes following § 1-309.31.

Subchapter VI. Government Reorganization Procedures.

§ 1-315.01. Purposes.

The Council of the District of Columbia ("Council") declares that it is the policy of the District of Columbia government ("District government") to:

(1) Promote better execution of laws, more effective management of the

District government and of its agencies and functions, and promote the expeditious administration of public business;

(2) Reduce expenditures, promote economy, and increase efficiency to the fullest extent practicable with respect to the District government operations; and

(3) Eliminate overlapping and duplication of effort by means of grouping, consolidating, or coordinating agencies and functions to the fullest extent consistent with the efficient operation of the District government.

(Oct. 17, 1981, D.C. Law 4-42, § 2, 28 DCR 3425.)

Section references. — This section is referred to in §§ 1-315.03 and 34-2202.07.

Prior Codifications. — 1981 Ed., § 1-299.1.

Legislative history of Law 4-42. — Law 4-42, the “Governmental Reorganization Procedures Act of 1981,” was introduced in Council and assigned Bill No. 4-197, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 16, 1981 and June 30, 1981, respectively. Signed by the Mayor on July 23,

1981, it was assigned Act No. 4-71 and transmitted to both Houses of Congress for its review.

Delegation of Authority. — Delegation of Authority pursuant to D.C. Law 15-205, the Fiscal Year 2005 the Budget Support Act of 2004, the Fiscal Year 2006 the Budget Support Act of 2005, and D.C. Law 16-192, the Fiscal Year 2007 the Budget Support Act of 2006, see Mayor’s Order 2007-143, June 20, 2007 (54 DCR 9598).

§ 1-315.02. Definitions.

For the purposes of this subchapter the term:

(1) “Agency” means any office, department, division, board, commission, or other agency of the District government, required by law or by the Mayor or Council to administer any law or any rule adopted under the authority of a law. The term “agency” does not include: The Superior Court of the District of Columbia, the District of Columbia Court of Appeals, those agencies identified in §§ 1-1001.03, 3-302, 6-621.01, 1-204.95 [repealed] and 34-801, or the Executive Office of the Mayor as defined in this subchapter.

(2) “Reorganization” is the process described in § 1-315.03.

(3) “Executive Office of the Mayor” means those offices or agencies expressly established to provide managerial, budgetary, personnel, secretarial, planning, informational, and special assistance to the Mayor in carrying out the Mayor’s administrative functions in the management of the District government. The term “Executive Office of the Mayor” does not include the Office of Personnel established by § 1-604.02.

(4) “Rule” means the whole or any part of any Mayor’s, Council’s, or agency’s statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy, or to describe the organization, procedure, or practice requirement of the Mayor, Council, or of any agency.

(5) “Boards and commissions” means bodies established by law or by order of the Mayor consisting of appointed members to perform a trust or execute official functions on behalf of the District government.

(Oct. 17, 1981, D.C. Law 4-42, § 3, 28 DCR 3425; Feb. 5, 1994, D.C. Law 10-68, § 4(a), 40 DCR 6311.)

Section references. — This section is referred to in § 34-2202.07.

Prior Codifications. — 1981 Ed., § 1-299.2.

Legislative history of Law 4-42. — For legislative history of D.C. Law 4-42, see Historical and Statutory Notes following § 1-315.01.

Legislative history of Law 10-68. — For legislative history of D.C. Law 10-68, see Historical and Statutory Notes following § 1-309.05.

§ 1-315.03. Process of reorganization defined.

For the purposes of carrying out the objectives of § 1-315.01, the process of reorganization means that action which results in the transfer, consolidation, abolition, or authorization with respect to functions and hierarchy, between or among agencies, and which affects the structure or structures thereof, at the control or responsibility center level(s), including, but not limited to:

(1) The transfer of the whole or part of an agency, or the whole or part of the functions thereof, to the jurisdiction and control of another agency;

(2) The consolidation of the whole or part of an agency, or the whole or part of the functions thereof, with the whole or part of another agency or the functions thereof;

(3) The abolition of the whole or part of an agency wherein such agency or part thereof does not have or will not have any functions; or

(4) The authorization of an officer or agency head to delegate functions vested in specific officers or agency heads not presently authorized to be delegated, except as provided in § 1-204.22(6).

(Oct. 17, 1981, D.C. Law 4-42, § 4, 28 DCR 3425.)

Section references. — This section is referred to in §§ 1-315.02, 1-315.04, and 34-2202.07.

Prior Codifications. — 1981 Ed., § 1-299.3.

Legislative history of Law 4-42. — For legislative history of D.C. Law 4-42, see Historical and Statutory Notes following § 1-315.01.

§ 1-315.04. Preparation, transmittal, publication, and effective date of reorganization plan.

(a) When, after investigation, the Mayor finds that it is necessary to accomplish 1 or more purposes of § 1-315.03, he or she shall prepare a detailed reorganization plan consistent with such findings, which are included in the plan, and shall transmit the plan bearing an identification number to the Council.

(b) Upon transmittal of the proposed reorganization plan, the Mayor shall cause the same to be published in the District of Columbia Register.

(c) The reorganization plan shall become effective on the 61st day following receipt by the Council, excluding Saturdays, Sundays, and holidays: Provided, that the Council does not adopt, within such 60 days, a resolution disapproving such reorganization plan.

(d) Unless the Council has adopted a disapproval resolution by the time of the request, the Mayor may, by written request transmitted to the Chairman of the Council, withdraw a reorganization plan prior to the expiration of the 60-day review period.

(Oct. 17, 1981, D.C. Law 4-42, § 5, 28 DCR 3425; Aug. 2, 1983, D.C. Law 5-24, § 10, 30 DCR 3341; Mar. 16, 1989, D.C. Law 7-201, § 4(a), 36 DCR 248.)

Cross references. — National capital revitalization corporation, transfer of authority from office of economic development, see § 2-1219.29.

Section references. — This section is referred to in §§ 1-315.05 and 34-2202.07.

Prior Codifications. — 1981 Ed., § 1-299.4.

Legislative history of Law 4-42. — For legislative history of D.C. Law 4-42, see Historical and Statutory Notes following § 1-315.01.

Legislative history of Law 5-24. — Law 5-24 was introduced in Council and assigned Bill No. 5-169, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 10, 1983, and May 24, 1983, respectively. Signed by the Mayor on June 9, 1983, it was assigned Act No. 5-41 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-201. — Law 7-201 was introduced in Council and assigned Bill No. 7-95, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 15, 1988 and November 29, 1988, respectively. Signed by the Mayor on December 23, 1988, it was assigned Act No. 7-271 and transmitted to both Houses of Congress for its review.

Mayor's Orders. — Implementation of Reorganization Plan No. 2 of 1992, Establishment of the District of Columbia Office of Tourism and Promotions: See Mayor's Order 93-81, June 21, 1993.

Editor's notes. — Reorganization Plan #2 of 1993 for the Office of the Assistant City Administrator for Human Resources Development Approval Resolution of 1993: Pursuant to Resolution 10-123, effective August 6, 1993, the Council approved Reorganization Plan #2 of 1993 for the Office of the Assistant City Administrator for Human Resources Development.

Reorganization Plan No. 6 of 1993 Transferring the Bureau of Correctional Services from the Department of Human Services to the Department of Corrections Disapproval Resolution of 1993: Pursuant to Resolution 10-211, effective December 17, 1993, the Council disapproved Reorganization Plan No. 6 of 1993

transferring the Bureau of Correctional Services from the Department of Human Services to the Department of Corrections.

Reorganization Plan No. 4 of 1996: The administrative and management support functions in the Department of Human Services as set forth in Sections III. (A), (B), (C), (D), (E), and (F), of Reorganization Plan No. 3 of 1986, dated January 3, 1987, that relate to the functions set forth in section V. (A)(I) above were transferred to the Department of Health.

Reorganization Plan No. 4 of 1996: Pursuant to Reorganization Plan No. 4 of 1996, each of the functions assigned, and authorities delegated to the Director of the Department of Human Services as set forth in Sections III. (K), (L), and (P), of Reorganization Plan No. 3 of 1986, dated January 3, 1987; and.

Reorganization Plan No. 5 of 1996: Pursuant to Reorganization Plan No. 5 of 1996, the function of providing mental health services to inmates in Department of Corrections facilities provided by the Bureau of Correctional Services, Commission on Mental Health Services, were transferred to the Department of Corrections.

International Business Program abolished: Pursuant to Reorganization Plan No. 7 of 1996, effective December 13, 1996, the International Business Program in the Office of Economic Development was abolished and its functions transferred to the Office of International Affairs which was created as an independent subordinate agency within the Executive Office of the Mayor. Additionally, Reorganization Plan No. 7 of 1996 transferred to the Office of International Affairs, 2 International Business Program positions, associated property, records and unexpended balances of appropriations, and other funds, if any, that related to the positions and functions assigned to the Office of International Affairs.

Transfer of powers, duties, and responsibilities from Office of Economic Development: Section 30(d) of D.C. Law 12-144 provided for the transfer of the powers, duties, and responsibilities of the Office of Economic Development to the Board of Directors of the National Capital Revitalization Corporation, and for the abolition of the Office of Economic Development.

§ 1-315.05. Contents and format of reorganization plan.

(a) A reorganization plan transmitted by the Mayor pursuant to § 1-315.04 shall:

(1) In such cases as the Mayor deems necessary, change the name of an agency or part of an agency affected by reorganization and the title of its head,

designate the name of the agency resulting from the reorganization, and the title of its head;

(2) Provide for the transfer or other disposition of the records, property, and personnel affected by the reorganization;

(3) Provide for the transfer of such unexpended balances of appropriations and other funds available for use in connection with a function or agency affected by a reorganization as the Mayor deems necessary by reason of such reorganization for use by the agency which shall be responsible for the function after the reorganization plan becomes effective: Provided, however, that all such unexpended balances so transferred may be used only for the purposes for which the appropriation was originally made;

(4) Provide for the termination of the affairs of an agency abolished as a result of the reorganization;

(5) Provide a timetable for the implementation of the reorganization;

(6) Provide for reporting and evaluation systems that will allow for the results of the plan to be measured; and

(7) Be in the following format:

(A) Mayor's statement;

(B) Reorganization plan;

(C) Section-by-section analysis;

(D) Rationale for the reorganization plan:

(i) Problems with the present organization;

(ii) Recent reorganization studies and recommendations, if any; and

(iii) Expected benefits and improvements;

(E) Functional Organization Chart of each affected agency:

(i) Existing; and

(ii) Proposed;

(F) Staffing organizational chart indicating grade and source of funding for each position:

(i) Existing; and

(ii) Proposed;

(G) Budget data relevant to present and proposed operations of entities to be reorganized:

(i) Impact on financial management system budget structure:

(I) Control centers; and

(II) Responsibility centers;

(ii) Impact on budget organization:

(I) Total budget comparisons;

(II) Changes in budget organization (grants and appropriated funds combined); and

(III) Changes detailed by grant and appropriated funds by responsibility center;

(H) Transition planning and employee protection; and

(I) Training needs.

(b) The Mayor shall include, in his or her transmittal message to accompany the plan, the statutory authority for the exercise of the function(s) affected, and an itemization, to the extent practicable, of the reduction of expenditures as a probable result of the reorganization.

(c) A reorganization plan may provide for appointment with the advice and consent of the Council and the salary of the agency head (including an agency resulting from a consolidation or other type of reorganization) if the Mayor finds, and his or her transmittal message declares, that by reason of a reorganization made pursuant to the plan, such provisions are necessary.

(Oct. 17, 1981, D.C. Law 4-42, § 6, 28 DCR 3425; Feb. 5, 1994, D.C. Law 10-68, § 4(b), 40 DCR 6311.)

Section references. — This section is referred to in §§ 7-731 and 34-2202.07.

Prior Codifications. — 1981 Ed., § 1-299.5.

Legislative history of Law 4-42. — For legislative history of D.C. Law 4-42, see Historical and Statutory Notes following § 1-315.01.

Legislative history of Law 10-68. — For legislative history of D.C. Law 10-68, see Historical and Statutory Notes following § 1-309.05.

§ 1-315.06. Transmittal of District of Columbia government organization chart.

The Mayor shall annually submit to the Council, on or before February 1st for a 45-day period of review, a revised chart detailing the organization and structure of the District government that shall reflect any reorganization plans or legislative changes relating to the structure of the District government. If the Council does not approve or disapprove the chart, by resolution, within a 45-day review period, excluding Saturdays, Sundays, holidays, and days of Council recess, the chart shall be deemed approved.

(Oct. 17, 1981, D.C. Law 4-42, § 7, 28 DCR 3425; Mar. 16, 1989, D.C. Law 7-201, § 4(b), 36 DCR 248.)

Section references. — This section is referred to in § 34-2202.07.

Prior Codifications. — 1981 Ed., § 1-299.6.

Legislative history of Law 4-42. — For legislative history of D.C. Law 4-42, see Historical and Statutory Notes following § 1-315.01.

Legislative history of Law 7-201. — For legislative history of D.C. Law 7-201, see Historical and Statutory Notes following § 1-315.04.

Mayor's Orders. — Establishment — Historical Records Advisory Board, see Mayor's Order 2002-150, September 13, 2002 (49 DCR 8615).

Editor's notes. — Official organizational structure of District government: Pursuant to this section, the organizational structure set forth below is the official organizational structure of the District of Columbia government as enacted by D.C. Law 7-139.

Commission on Cooperative Economic Development abolished: Section 401(k) of D.C. Law 12-86, effective April 29, 1998, provided that the Commission on Cooperative Economic Development, established by Mayor's Order 80-

168, issued May 29, 1980 (27 DCR 2596), is abolished. Community Advisory Board on the Deinstitutionalization of Forest Haven abolished: Section 401(m) of D.C. Law 12-86, effective April 29, 1998 provided that the community Advisory Board on the Deinstitutionalization of Forest Haven, established by Mayor's Order 86-177, issued October 1, 1986 (33 DCR 6963), is abolished. History Records Advisory Board abolished: Section 401(q) of D.C. Law 12-86, effective April 29, 1998, provided that the Historical Records Advisory Board, established by Mayor's Order 84-35, issued February 10, 1984 (31 DCR 799), is abolished. Traffic Safety Advisory Committee abolished: Section 401(cc) of D.C. Law 12-86, effective April 29, 1998, provided that the Traffic Safety Advisory Committee, established by Mayor's Order 84-228, issued December 13, 1984 (32 DCR 226), is abolished. Mayor's Policy Advisory Committee for Weatherization of Low-Income Homes abolished: Section 401(ee) of D.C. Law 12-86, effective April 29, 1998, provided that the Mayor's Policy Advisory Committee for Weatherization of Low-Income Homes, established by Mayor's Order 89-12,

issued January 6, 1989 (36 DCR 1260), is abolished.

CASE NOTES

Statutory Independent Agencies.

Mayor was authorized to reduce funds allocated to District of Columbia public library in budget enacted by District's Council and in Appropriations Act enacted by Congress, in attempting to balance District's budget, despite library's status as statutory independent agency; mayor had statutory duty to balance budget regardless of sums previously appropriated, classification of library as statutory independent agency did not make library indepen-

dent of mayor's fiscal authority, and neither Council's budget nor Appropriations Act contained any language requiring that reductions be made only in funding of agencies under mayor's control. D.C. Code 1981, §§ 1-299.6, 1-1502(5), 37-101, 37-106, 47-301(a)(1), 47-310(a)(9), 47-313(d); District of Columbia Appropriations Act, 1990, § 103, 103 Stat. 1267. *Hazel v. Barry*, 580 A.2d 110, 1990 D.C. App. LEXIS 226 (1990).

§ 1-315.07. Report on District boards and commissions.

(a) The Mayor shall, within 60 days of October 17, 1981, transmit to the Council a report on all boards and commissions in existence during the preceding 12-month period by major categories by 1 of the following functions:

- (1) Institutional governance boards;
- (2) Independent regulatory boards;
- (3) Judicial boards;
- (4) Appeals boards;
- (5) Procedural boards;
- (6) Institutional licensure boards;
- (7) Occupational and professional licensure boards;
- (8) State planning boards; or
- (9) Advisory boards.

The report shall include the name, functions, status, composition, date and authority for its creation, the total estimated annual cost to the District government to fund, service, supply, and maintain such board or commission, and the agency responsible for providing the necessary support for the board or commission.

(b) The Mayor shall, within 90 days after October 17, 1981, issue in accordance with subchapter I of Chapter 5 of title 2, rules and regulations establishing criteria for evaluating all boards and commissions to determine whether such board or commission should be abolished or merged with any other board or commission, and whether the responsibility of such board or commission performs a necessary function not already being performed.

(c) The Mayor shall, immediately after October 1, 1982, institute a comprehensive review of the activities and responsibilities of each board and commission to determine:

- (1) Whether such board or commission is carrying out its purpose;
- (2) Whether, consistent with the provisions of applicable statutes, the responsibilities assigned to it should be revised;
- (3) Whether it should be merged with another board or commission; or
- (4) Whether it should be abolished.

Upon completion of the review, the Mayor shall make recommendations to either the agency head or the Council with respect to action he or she believes

should be taken. Thereafter, the Mayor shall carry out a similar review annually, and transmit to the Council no later than February 1st of each year, a report on the activities, status, and composition of all boards and commissions. The report shall contain the name of every board and commission, the date of and authority for its creation, its termination date or the date it is to make a report, its functions, a reference to the reports it has submitted, a statement of whether it is an ad hoc or continuing body, and the total estimated annual cost to the District government to fund, service, supply, and maintain such board or commission.

(Oct. 17, 1981, D.C. Law 4-42, § 8, 28 DCR 3425; June 4, 1982, D.C. Law 4-113, § 3, 29 DCR 1695.)

Section references. — This section is referred to in § 34-2202.07.

Prior Codifications. — 1981 Ed., § 1-299.7.

Legislative history of Law 4-42. — For legislative history of D.C. Law 4-42, see Historical and Statutory Notes following § 1-315.01.

Legislative history of Law 4-113. — Law 4-113 was introduced in Council and assigned Bill No. 4-407, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on

March 9, 1982 and March 23, 1982, respectively. Signed by the Mayor on April 12, 1982, it was assigned Act No. 4-176 and transmitted to both Houses of Congress for its review.

Editor's notes. — Establishment of new commissions: Section 402 of D.C. Law 12-86 provided that, as of the effective date of the act, there shall be no new commission established except as necessary to carry out a legislatively mandated purpose as required by federal or District of Columbia laws.

Subchapter VII. Surety.

§ 1-317.01. Persons prohibited from becoming surety upon bond.

Neither the Mayor of the District of Columbia, nor any officer whatsoever of the District of Columbia, shall be accepted as surety upon any bond required to be given to the District of Columbia; nor shall any contractor be accepted as surety for any officer or other contractor in said District.

(June 11, 1878, 20 Stat. 103, ch. 180, § 2.)

Prior Codifications. — 1981 Ed., § 1-301. 1973 Ed., § 1-210.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

Subchapter VIII. Governmental Volunteers.

§ 1-319.01. Utilization by District government encouraged; exception.

It shall be the policy of the District of Columbia government to utilize volunteer citizens in as many governmental programs as is practicable to serve the interests of the community. No volunteer person shall be used to fill any position or perform any service which is currently being performed by an employee of the District of Columbia government.

(June 28, 1977, D.C. Law 2-12, § 2, 24 DCR 1442.)

Cross references. — Merit system, continuation of existing laws, see § 1-632.06.

Section references. — This section is referred to in §§ 1-319.03, 1-319.04, and 1-632.06.

Prior Codifications. — 1981 Ed., § 1-304. 1973 Ed., § 1-215a.

Legislative history of Law 2-12. — Law

2-12 was introduced in Council and assigned Bill No. 2-87, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on March 22, 1977 and April 5, 1977, respectively. Signed by the Mayor on April 26, 1977, it was assigned Act No. 2-33 and transmitted to both Houses of Congress for its review.

CASE NOTES

Ministers.

Case challenging District of Columbia's requirement that ministers seeking regular entrance to correctional facilities negotiate a standard volunteer services agreement would be remanded for determination as to whether District of Columbia Corrections Department's interpretation of Volunteer Services Act applied to situation in which a minister who for sincere

religious reasons was unable to endorse statement in agreement was required to execute agreement as prerequisite to gaining access to prisons to perform religious services for inmates requesting his ministry. D.C. Code 1981, §§ 1-304 to 1-308; Act July 7, 1998, 30 Stat. 652. *Karriem v. Barry*, 743 F.2d 30, 1984 U.S. App. LEXIS 18737 (C.A.D.C. 1984).

§ 1-319.02. Promulgation of regulations.

The Mayor is directed to promulgate regulations governing the use of volunteers by agencies, departments, commissions, and instrumentalities of the District of Columbia: Provided, that the District of Columbia Board of Education and the Council of the District of Columbia may promulgate regulations governing their respective use of volunteers.

(June 28, 1977, D.C. Law 2-12, § 3, 24 DCR 1442.)

Section references. — This section is referred to in §§ 1-319.03 and 1-319.04.

Prior Codifications. — 1981 Ed., § 1-305. 1973 Ed., § 1-215b.

Legislative history of Law 2-12. — For legislative history of D.C. Law 2-12, see Historical and Statutory Notes following § 1-319.01.

§ 1-319.03. Conflicts of interest; ineligibility for employee benefits; liability of District for torts of volunteers.

(a) Volunteer citizens may not assist governmental programs until regula-

tions have been properly promulgated under the authority of §§ 1-319.01 to 1-319.05. No volunteer may be placed in any position likely to constitute a conflict of interest or the appearance of a conflict of interest in violation of the provisions of Chapter 29 of Title 18, United States Code, or Parts C and D of subchapter II of Chapter 11A of this title.

(b) Persons engaged as volunteers by the District of Columbia government as authorized by this section shall not be eligible for benefits provided to employees of the District of Columbia government under Chapters 81, 83, 85, 87, and 89 of Title 5, United States Code.

(c) All volunteers shall be considered employees of the District of Columbia government for the purposes of §§ 2-411 to 2-416.

(d) The District of Columbia shall be liable to third parties for tortious injury caused by volunteers under its supervision and control.

(June 28, 1977, D.C. Law 2-12, § 4, 24 DCR 1442; Apr. 27, 2012, D.C. Law 19-124, § 501(i), 59 DCR 1862.)

Section references. — This section is referred to in § 1-319.04.

Prior Codifications. — 1981 Ed., § 1-306. 1973 Ed., § 1-215c.

Effect of amendments. — D.C. Law 19-124, in subsec. (a), substituted “parts C and D of subchapter II of Chapter 11A of this title” for “part F of subchapter I of Chapter 11 of this title”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 401(i) of Board of Ethics and Government Accountabil-

ity Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 2-12. — For legislative history of D.C. Law 2-12, see Historical and Statutory Notes following § 1-319.01.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

Editor’s notes. — In addition to the references to Title 5 of the United States Code found in (b), there is now a Chapter 84, Retirement.

§ 1-319.04. Inapplicability to offices of United States Marshal or United States Attorney for the District of Columbia.

No provision of §§ 1-319.01 to 1-319.05 shall be deemed to apply to volunteers in the Offices of the United States Marshal or the United States Attorney for the District of Columbia.

(June 28, 1977, D.C. Law 2-12, § 5, 24 DCR 1442.)

Section references. — This section is referred to in § 1-319.03.

Prior Codifications. — 1981 Ed., § 1-307. 1973 Ed., § 1-215d.

Legislative history of Law 2-12. — For legislative history of D.C. Law 2-12, see Historical and Statutory Notes following § 1-319.01.

§ 1-319.05. Definitions.

For the purposes of this subchapter:

(1) The term “employee” means a person who is paid by the District of Columbia government from grant or appropriated funds for his or her services.

(2) The term “volunteer” means a person who donates his or her services to a specific program or department of the District of Columbia government, by his or her free choice and without payment for the services rendered. The

reimbursement of the actual expenditures by a volunteer on behalf of the District of Columbia government shall not make that person an employee of the District of Columbia for the purposes of this section.

(3) The term "agencies, departments, commissions, and instrumentalities of the District of Columbia" means all governmental instrumentalities and bodies of the District of Columbia government, except the Superior Court of the District of Columbia and the District of Columbia Court of Appeals.

(June 28, 1977, D.C. Law 2-12, § 8, 24 DCR 1442.)

Section references. — This section is referred to in §§ 1-319.03 and 1-319.04.

Prior Codifications. — 1981 Ed., § 1-308. 1973 Ed., § 1-215e.

Legislative history of Law 2-12. — For legislative history of D.C. Law 2-12, see Historical and Statutory Notes following § 1-304.

CASE NOTES

Ministers.

Case challenging District of Columbia's requirement that ministers seeking regular entrance to correctional facilities negotiate a standard volunteer services agreement would be remanded for determination as to whether District of Columbia Corrections Department's interpretation of Volunteer Services Act applied to situation in which a minister who for sincere

religious reasons was unable to endorse statement in agreement was required to execute agreement as prerequisite to gaining access to prisons to perform religious services for inmates requesting his ministry. D.C. Code 1981, §§ 1-304 to 1-308; Act July 7, 1898, 30 Stat. 652. *Karriem v. Barry*, 743 F.2d 30, 1984 U.S. App. LEXIS 18737 (C.A.D.C. 1984).

Subchapter IX. Honoraria.

§ 1-321.01. Mayor's authority to determine honorariums; deposit of funds in Treasury; receipt of honorarium without prejudice to retirement compensation; "honorarium" defined.

(a) Notwithstanding the provisions set forth in the sections mentioned in § 1-321.02, the Mayor of the District of Columbia is authorized and empowered to determine from time to time the honorariums to be paid to the members of the boards, commissions, and committees appointed and established by authority of such sections, such authority to include the power to determine the total amount per annum of any such honorarium.

(b) The funds derived from fees and charges for examinations, licenses, certificates, registrations, or for any other service rendered by any such board, commission, or committee, remaining after the payment, or provision made for payment of all obligations of the respective boards, commissions, and committees outstanding as of June 30, 1954, shall be deposited in the Treasury to the credit of the District of Columbia and on and after July 14, 1956, all moneys collected for such fees and charges shall be paid into the Treasury to the credit of the District of Columbia.

(c) Notwithstanding the limitation of any other law or regulation to the contrary, any person heretofore or hereafter appointed as a member of any such board, commission or committee may receive his honorarium as well as

any retired pay, retirement compensation, or annuity to which such member may be entitled on account of previous service rendered to the United States or District of Columbia government.

(d) As used in §§ 1-321.01 to 1-321.06, “honorarium” means the fee, per diem, compensation, or any amount paid to any member of any such board, commission, or committee for service as such member. Payments made under §§ 1-321.01 to 1-321.06 shall be governed by the provisions of § 1-611.08.

(July 14, 1956, 70 Stat. 532, ch. 590, § 1; Mar. 3, 1979, D.C. Law 2-139, § 3205(o), 25 DCR 5740.)

Cross references. — Merit system, effective date provisions, see § 1-636.02.

Prior Codifications. — 1981 Ed., § 1-348. 1973 Ed., § 1-254.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-333.07.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorga-

nization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 1-321.02. Applicability of this subchapter.

This subchapter shall apply to the boards, commissions, and committees and the members thereof, respectively, established pursuant to the following sections: 1-301.01, 3-1601 to 3-1631 [repealed], 3-1701 to 3-1719 [repealed], 3-2001 to 3-2028 [repealed], 3-2101 to 3-2132 [repealed], 3-2901 to 3-2943 [repealed], 3-2301.01 to 3-2301.10 [repealed], 3-2401 to 3-2422 [repealed], 3-2501 to 3-2508 [repealed], 3-2601 to 3-2619 [repealed], 47-2886.01 to 47-2886.18, 3-2701 to 3-2707 [repealed], 42-1701 to 42-1709, and 47-2801 to 47-2849.

(July 14, 1956, 70 Stat. 533, ch. 590, § 2; Mar. 10, 1983, D.C. Law 4-209, § 35(d), 30 DCR 390.)

Section references. — This section is referred to in §§ 1-321.01, 1-321.03, 1-321.04, and 1-321.06.

Prior Codifications. — 1981 Ed., § 1-349. 1973 Ed., § 1-255.

Legislative history of Law 4-209. — For legislative history of D.C. Law 4-209, see Historical and Statutory Notes following § 1-301.74.

References in text. — Sections 3-1601 through 3-1631 were repealed by D.C. Law 9-184, § 604, 39 DCR 8208, effective March 13, 1992.

Sections 3-1701 to 3-1719 and 3-2001 to

3-2028 were repealed by D.C. Law 9-245, § 38, 40 DCR 660, effective March 17, 1993.

Sections 3-2601, 3-2886.05 through 3-2886.07, and 3-2702 have been omitted at the direction of the District of Columbia Codification Counsel.

Sections 3-2101 to 3-2132, 3-2901 to 3-2943, 3-2301.01 to 3-2301.10, 3-2401 to 3-2422 and 3-2601 to 3-2619 were repealed by D.C. Law 6-99, § 1104, effective March 26, 1986.

Sections 47-2801 through 47-2805 were repealed by D.C. Law 12-86, § 101(c), 45 DCR 1172, effective April 29, 1998.

Sections 3-2601 to 3-2608 and 3-2701 to

3-2707, referred to in this section, were repealed April 17, 1999.

§ 1-321.03. Refund of unearned fees.

Any fee or charge paid for an examination, license, certificate, or registration pursuant to any sections mentioned in § 1-321.02 shall, if not earned, be refunded upon application therefor: Provided, that application for refund is made not later than the end of the 3rd fiscal year following the fiscal year in which such fee or charge was made.

(July 14, 1956, 70 Stat. 534, ch. 590, § 3.)

Section references. — This section is referred to in § 1-321.01.

Prior Codifications. — 1981 Ed., § 1-350. 1973 Ed., § 1-256.

§ 1-321.04. Authority to fix and change licensing periods; proration of fee.

The Mayor of the District of Columbia is authorized, after a public hearing, to fix and change from time to time the period for which any license, certificate, or registration authorized by any section set forth in § 1-321.02 may be issued. Upon change of a license, certificate or registration period, the fee for any such license, certificate, or registration shall be prorated on the basis of the time covered.

(July 14, 1956, 70 Stat. 534, ch. 590, § 4; Apr. 18, 1978, D.C. Law 2-72, § 2, 24 DCR 7065.)

Section references. — This section is referred to in § 1-321.01.

Prior Codifications. — 1981 Ed., § 1-351. 1973 Ed., § 1-257.

Legislative history of Law 2-72. — Law 2-72 was introduced in Council and assigned Bill No. 2-204, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on January 10, 1978 and January 24, 1978, respectively. Approved without the signature of the Mayor on February 9, 1978, it was assigned Act No. 2-148 and transmitted to both Houses of Congress for its review.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of

Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(16) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 1-321.05. References to boards, commissions, and committees mentioned in this subchapter.

Whenever any board, commission, or committee, other than the Mayor of the District of Columbia, is mentioned in this subchapter, such board, commission, or committee shall be deemed to be the board, commission, or committee or

other agency succeeding to the functions of the board, commission, or committee, so mentioned, pursuant to Reorganization Plan No. 5 of 1952.

(July 14, 1956, 70 Stat. 535, ch. 590, § 5.)

Section references. — This section is referred to in § 1-321.01.

Prior Codifications. — 1981 Ed., § 1-352. 1973 Ed., § 1-258.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 1-321.06. Appropriation for administration of sections mentioned in § 1-321.02.

There is hereby authorized to be appropriated out of the revenues of the District of Columbia such sums as may be necessary to pay the expenses of administering the sections listed in § 1-321.02, including the expenses of the Department of Licenses, Investigation and Inspections, established pursuant to authority contained in Reorganization Plan No. 5 of 1952.

(July 14, 1956, 70 Stat. 535, ch. 590, § 6.)

Section references. — This section is referred to in § 1-321.01.

Prior Codifications. — 1981 Ed., § 1-353. 1973 Ed., § 1-259.

Transfer of Functions. — Functions vested in the Department of Occupations and Professions by Reorganization Order No. 59, dated June 30, 1953, were transferred to the Director of the Department of Economic Development by Commissioner's Order No. 69-96, dated March

7, 1969. The Department of Economic Development was replaced by Mayor's Order 78-42, dated February 17, 1978, which Order established the Department of Licenses, Investigation and Inspections. The functions of the Department of Licenses, Investigations, and Inspections were transferred to the Department of Consumer and Regulatory Affairs by Reorganization Plan No. 1 of 1983, effective March 31, 1983.

Subchapter X. Certain reports.

§ 1-323.01. Annual report to Congress. [Repealed].

Repealed.

(June 11, 1878, 20 Stat. 108, ch. 180, § 12; Aug. 2, 1983, D.C. Law 5-24, § 20, 30 DCR 3341.)

Prior Codifications. — 1981 Ed., § 1-332. 1973 Ed., § 1-238.

Legislative history of Law 5-24. — For legislative history of D.C. Law 5-24, see Historical and Statutory Notes following § 1-303.02.

Editor's notes. — Organic Act of 1878: Sec-

tion 12 of the Act of June 11, 1878, 20 Stat. 108, ch. 180, read, in its entirety, as follows: "It shall be the duty of the said Commissioners to report to Congress at the next session succeeding their appointment a draft of such additional laws or amendments to existing laws as in their opin-

ion are necessary for the harmonious working of the system hereby adopted, and for the effectual and proper government of the District of Columbia: and said Commissioners shall

annually report their official doings in detail to Congress on or before the first Monday of December."

§ 1-323.02. Illustrations in annual reports prohibited unless authorized by Mayor.

Hereafter no department, board, office, or agency of the government of the District of Columbia shall include any illustration in any annual report prepared by it unless such illustration be authorized under order or regulation approved by the Mayor of the District of Columbia.

(May 18, 1910, 36 Stat. 381, ch. 248, § 1; July 21, 1959, 73 Stat. 223, Pub. L. 86-101, § 1.)

Prior Codifications. — 1981 Ed., § 1-333. 1973 Ed., § 1-239.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 1-323.03. Originals of discontinued reports to be preserved for public inspection.

In all cases where the printing of annual or special reports of the government of the District of Columbia is discontinued, the original copy thereof shall be kept on file in the Office of the Mayor of the District of Columbia for public inspection.

(May 21, 1928, 45 Stat. 649, ch. 659.)

Prior Codifications. — 1981 Ed., § 1-334. 1973 Ed., § 1-240.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

Subchapter XI. Special Funds.

Part A

PRODUCTIVITY BANK FUND.

§ 1-325.01. Productivity Bank Fund established.

(a) There is established a revolving and proprietary Productivity Bank Fund to be used to provide loans to agencies that can justify initiatives that would generate additional revenues above current certified levels, or savings, according to productivity goals and measures established pursuant to § 1-325.02.

(b) Loans from the Productivity Bank Fund shall be decided by a Bank Loan Committee. The Bank Loan Committee shall consist of 5 members as follows:

- (1) The Mayor or his or her designee;
 - (2) The Chairman of the Council or his or her designee;
 - (3) The Chief Financial Officer or his or her designee;
 - (4) A member selected by the Labor/Management Partnership Council;
- and

(5) One public member with experience in project finance and banking, appointed by the Mayor, with the advice and consent of the Council.

(c) The Mayor shall transmit to the Council, for a 45-day period of review, excluding days of Council recess, the nomination of the public member of the Bank Loan Committee. The Council shall be deemed to have approved the nomination if during the 45-day period, no member introduces a resolution disapproving the nomination. If a member introduces a resolution disapproving the nomination within the 45-day period, the Council shall have an additional 45 days, excluding days of Council recess, to disapprove the nomination by resolution, or it will be deemed approved.

(Oct. 20, 1999, D.C. Law 13-38, § 1402, 46 DCR 6373.)

Prior Codifications. — 1981 Ed., § 1-367.1.

Emergency legislation. — For temporary (90-day) addition of section, see § 1402 of the Service Improvement and Fiscal Year 2000 Budget Support Emergency Act of 1999 (D.C. Act 13-110, July 28, 1999, 46 DCR 6320).

Legislative history of Law 13-38. — For Law 13-38, see notes following § 1-301.91.

Short title. — Section 1401 of D.C. Law 13-38 provided: "This title may be cited as the 'Productivity Bank Fund Establishment Act of 1999'."

§ 1-325.02. Rulemaking.

The Mayor shall issue rules setting out the criteria by which the Bank Loan Committee shall evaluate loan applications and the terms that shall govern the loans, including procedures for repayment. The Bank Loan Committee shall not issue any loans until the publication of final rules to implement this subchapter, in accordance with the District of Columbia Administrative

Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Code § 2-501et seq.).

(Oct. 20, 1999, D.C. Law 13-38, § 1403, 46 DCR 6373.)

Prior Codifications. — 1981 Ed., § 1-367.2.

Emergency legislation. — For temporary (90-day) addition of section, see § 1403 of the Service Improvement and Fiscal Year 2000

Budget Support Emergency Act of 1999 (D.C. Act 13-110, July 28, 1999, 46 DCR 6320).

Legislative history of Law 13-38. — For Law 13-38, see notes following § 1-336.

Part B

PUBLIC PLANNING CAPITAL PROJECT FUND.

§ 1-325.11. Establishment of Public Planning Capital Project Fund.

(a) The Public Planning Capital Project Fund is hereby established.

(b) With each annual capital budget request submitted by the Mayor to the Council in accordance with § 1-204.42, the Mayor shall include as a discrete capital project a public planning fund for which the Mayor shall propose any amount he considers necessary for the uses and purposes set forth in subsection (c) of this section.

(c) Subject to authorization by Congress in an appropriations act, the monies designated for the public planning capital project fund shall be used by the District of Columbia Office of Planning, or its successor, to fund the preparation and development of public planning studies and recommendations for proposed capital projects that will be funded or guaranteed, in part or in whole, by the District government.

(d) Nothing in this section shall be construed to prohibit or limit the appropriation of additional funds from the revenues of the District for the uses and purposes set forth in this section.

(Nov. 13, 2003, D.C. Law 15-39, § 1302, 50 DCR 5668.)

Emergency legislation. — For temporary (90-day) addition, see § 1302 of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) addition, see § 1302 of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

Legislative history of Law 15-39. — For Law 15-39, see notes following § 1-204.42.

Short title. — Short title of title XIII of Law 15-39: Section 1301 of D.C. Law 15-39 provided that title XIII of the act may be cited as the Public Planning Capital Project Act of 2003.

Part C

DEPARTMENT OF CORRECTIONS REIMBURSEMENT
FUND.**§ 1-325.21. Department of Corrections Reimbursement Fund.**

(a) There is established a nonlapsing fund to be designated as the Department of Corrections Reimbursement Fund (“Fund”), which shall be a segregated account within the General Fund of the District of Columbia and shall be used to support the activities prescribed by the Memorandum of Understanding, effective January 1, 2002, between the United States Marshals Service and the Department of Corrections (“Memorandum”).

(b) All revenue derived from the reimbursement of the cost of services provided by the Department of Corrections pursuant to the Memorandum, and all fees collected for the department’s housing, transporting, and handling of adult pretrial or sentenced felons, probation, parole, or supervision violators, and prisoners returning to the Superior Court of the District of Columbia on writ or subject to other commitment orders shall be deposited into the Fund.

(c) Funds deposited in the Fund shall not revert to the fund balance of the General Fund of the District of Columbia at the end of any fiscal year or at any other time, but shall be continually available for the uses and purposes set forth in this section, subject to authorization by Congress.

(Oct. 20, 2005, D.C. Law 16-33, § 3032, 52 DCR 7503.)

Emergency legislation. — For temporary (90 day) addition, see § 3032 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 1-617.17.

Short title. — Short title of subtitle C of title III of Law 16-33: Section 3031 of D.C. Law 16-33 provided that subtitle C of title III of the act may be cited as the Department of Corrections Reimbursement Fund Act of 2005.

Part D

FISCAL YEAR 2006 EDUCATIONAL INVESTMENT FUND.

§ 1-325.31. Fiscal Year 2006 Educational Investments Fund for District of Columbia Public Schools and Public Charter Schools.

There is established a Fiscal Year 2006 Educational Investments Fund for District of Columbia Public Schools and Public Charter Schools (“Fund”), into which shall be deposited \$25.2 million in Fiscal Year 2006, of which \$21 million and \$4.2 million shall be allocated in Fiscal Year 2006 to the District of Columbia Public Schools and public charter schools, respectively, to conduct activities leading to increased student achievement and improved school

performance, including comprehensive reading and math programs, parent and family resource centers, comprehensive art and music programs, the Summer Bridge Program, and a textbook management system. No funds from the Fund shall be made available for expenditure unless, by no later December 31, 2005, the Superintendent, the District of Columbia Public Charter School Board, and the District of Columbia Board of Education Charter School Board submit to the Mayor detailed plans which describe specific initiatives or activities that will be implemented during Fiscal Year 2006, and include budget and performance goals and measures for each identified initiative or activity.

(Oct. 20, 2005, D.C. Law 16-33, § 4032, 52 DCR 7503.)

Emergency legislation. — For temporary (90 day) addition, see § 4032 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — Law 16-33, the “Fiscal Year 2006 Budget Support Act of 2005”, was introduced in Council and assigned Bill No. 16-200 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 10, 2005, and June 21, 2005, respectively. Signed by the Mayor on July 26, 2005, it was

assigned Act No. 16-166 and transmitted to both Houses of Congress for its review. D.C. Law 16-33 became effective on October 20, 2005.

Short title. — Short title of subtitle D of title IV of Law 16-33: Section 4031 of D.C. Law 16-33 provided that subtitle D of title IV of the act may be cited as the Fiscal Year 2006 Educational Investments Fund for District of Columbia Public Schools and Public Charter Schools Establishment Act of 2005.

Part E

SCHOOLS MODERNIZATION FUND.

§ 1-325.41. Schools Modernization Fund established.

(a) There is established a dedicated fund within the General Fund of the District of Columbia, as a separate budget line item, to be known as the Schools Modernization Fund. The fund shall be a revolving, nonlapsing fund, which shall consist of the following distinct accounts:

(1) The Debt Service account, the funds of which shall be solely used to pay the debt service on revenue bonds issued in accordance with this part, and which shall be funded through:

(A) Local funds;

(B) Federal funds;

(C) Federal grant funds;

(D) Any grants, gifts, or subsidies from public or private sources for the repair or renovation of District schools;

(E) Any return on investment of the assets of the Debt Service account, including interest thereon; and

(F) Such other funds as may be authorized to be deposited; and

(2) The Bond Revenue account, the funds of which shall be solely used to pay for the repair or renovation of District schools.

(b) Funds deposited in the Schools Modernization Fund shall not revert to the fund balance of the General Fund of the District of Columbia at the end of

any fiscal year or at any other time, but shall be continually available for the uses and purposes set forth in this section, subject to authorization by Congress.

(Oct. 20, 2005, D.C. Law 16-33, § 4042, 52 DCR 7503.)

Emergency legislation. — For temporary (90 day) addition, see § 4042 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — Law 16-33, the “Fiscal Year 2006 Budget Support Act of 2005”, was introduced in Council and assigned Bill No. 16-200 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 10, 2005, and June 21, 2005, respectively.

Signed by the Mayor on July 26, 2005, it was assigned Act No. 16-166 and transmitted to both Houses of Congress for its review. D.C. Law 16-33 became effective on October 20, 2005.

Short title. — Short title of subtitle E of title IV of Law 16-33: Section 4041 of D.C. Law 16-33 provided that subtitle E of title IV of the act may be cited as the Schools Modernization Amendment Act of 2005.

§ 1-325.42. Budget submission requirements.

(a) The Mayor shall submit to the Council, as part of the annual budget, a requested appropriation of local funds for the Schools Modernization Fund, including a description of estimated expenditures.

(b) The appropriation of local funds to, or the existence of retained funds in, the Schools Modernization Fund shall not replace local funding that otherwise would be directed to the capital budget for the District of Columbia Public Schools.

(Oct. 20, 2005, D.C. Law 16-33, § 4043, 52 DCR 7503.)

Emergency legislation. — For temporary (90 day) addition, see § 4043 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 1-325.41.

§ 1-325.43. Bond authorization.

(a) Pursuant to § 1-204.90, the Mayor is authorized to issue bonds to assist in financing, refinancing, or reimbursing costs of undertakings by the District to accomplish the purposes of this part.

(b) The Mayor shall submit and the Council shall approve, by resolution, the amount of bonds that shall be issued at any time for a project authorized by subsection (a) of this section that meets the criteria set forth in § 1-325.44. Each approval resolution shall state the aggregate principal amount of the bonds to be issued, and shall be accompanied by a description of each project showing its adherence to the criteria set forth in § 1-325.44.

(Oct. 20, 2005, D.C. Law 16-33, § 4044, 52 DCR 7503.)

Emergency legislation. — For temporary (90 day) addition, see § 4044 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 1-325.41.

§ 1-325.44. Criteria for use of bond revenue by District of Columbia Public Schools.

(a) To receive funds from the Bond Revenue account of the Schools Modernization Fund, the District of Columbia Public Schools ("DCPS") shall:

(1) Develop a new Master Facilities Plan pursuant to § 38-2803, that incorporates the findings and goals of the master education plan developed by the Superintendent.

(2) Consolidate facilities and dispose of underused buildings in accordance with the Master Facilities Plan developed under subsection (a) of this section, and applicable law; and

(3) Submit to the Mayor and Council a proposed expenditure plan developed in consideration of city-wide capital efforts and approved by the Board of Education which shall include:

(A) The specific repair or renovation for which the requested funds shall be used;

(B) An explanation as to why these additional funds, which are available over and above funds appropriated for capital investment in schools, are necessary;

(C) An analysis as to how the specific project fits into the Master Facilities Plan developed under subsection (a) of this section and DCPS' strategic objectives for school modernization;

(D) An analysis of any new program capacity to be created, including the student population to be served, how it fits into the master education plan developed by the Superintendent, and any anticipated savings resulting from providing programs within DCPS facilities instead of out-of-state;

(E) A declaration that no funds from the Bond Revenue account are intended for expenditure on a facility set for disposition; and

(F) A time table for completion of the proposed repair or renovation.

(b) Priority in funding shall be given to projects that:

(1) Locate new out-of-District special education programs within DCPS facilities;

(2) Create additional capacity for vocational education programs within DCPS facilities;

(3) Co-locate public charter schools within DCPS facilities; or

(4) Develop mixed-use facilities in collaboration with the District of Columbia Public Library, the Department of Parks and Recreation, or other appropriate District agencies.

(Oct. 20, 2005, D.C. Law 16-33, § 4045, 52 DCR 7503; Mar. 2, 2007, D.C. Law 16-191, § 5(r), 53 DCR 6794.)

Effect of amendments. — D.C. Law 16-191, in subsec. (b)(4), validated a previously made technical correction.

Temporary Amendment of Section. — Section 3 of D.C. Law 17-15 repealed subsec. (a).

Section 5(b) of D.C. Law 17-15 provided that

the act shall expire after 225 days of its having taken effect.

Section 3 of D.C. Law 17-97, in subsec. (a), in the heading, substituted "Office of Public Education Facilities Modernization" for "District of Columbia Public Schools", in par. (1), substituted "Facilities Master Plan" for "Master Fa-

cilities Plan” and “Chancellor” for “Superintendent”, in par. (2), substituted “Facilities Master Plan” for “Master Facilities Plan”, in the lead-in language of par. (3), substituted “,which shall include” for “and approved by the Board of Education which shall include”, in par. (3)(C), substituted “Facilities Master Plan” for “Master Facilities Plan”, and in par. (3)(D), deleted “developed by the Superintendent.”.

Section 7(b) of D.C. Law 17-97 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition, see § 4045 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of section, see § 3 of School Modernization Funds Submission Requirements Waiver Emergency Amendment Act of 2007 (D.C. Act 17-30, April 19, 2007, 54 DCR 4079).

For temporary (90 day) amendment of sec-

tion, see § 3 of School Modernization Use of Funds Requirements Emergency Amendment Act of 2007 (D.C. Act 17-129, October 5, 2007, 54 DCR 10030).

For temporary (90 day) amendment of section, see § 3 of School Modernization Use of Funds Requirement Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-229, December 27, 2007, 55 DCR 225).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 1-325.41.

Legislative history of Law 16-191. — Law 16-191, the “Technical Amendments Act of 2006”, was introduced in Council and assigned Bill No. 16-760, which was referred to the Committee of the whole. The Bill was adopted on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 31, 2006, it was assigned Act No. 16-475 and transmitted to both Houses of Congress for its review. D.C. Law 16-191 became effective on March 2, 2007.

§ 1-325.45. Annual report; review of funding priorities.

(a) The Superintendent shall submit to the Council, the Mayor, and the Board of Education, an annual report containing the following information:

(1) A summary of any real estate portfolio review and business plan studies for potential partnership development completed by the Superintendent;

(2) The number of projects developed by the Superintendent;

(3) The number of projects financed by the Schools Modernization Fund that:

(A) Created additional capacity within the District of Columbia Public Schools for special education students or programs;

(B) Created additional capacity for vocational education programs;

(C) Created a co-location arrangement with a public charter school; or

(D) Developed a shared-use facility or site between the District of Columbia Public Schools and another District agency.

(b) The Superintendent shall review the priorities for use of revenue from the Schools Modernization Fund specified in § 1-325.44 every 5 years and make recommendations to the Mayor, the Council, and the Board of Education on their continued validity or propose new priorities.

(Oct. 20, 2005, D.C. Law 16-33, § 4046, 52 DCR 7503.)

Emergency legislation. — For temporary (90 day) addition, see § 4046 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 1-325.41.

Part F

HIV/AIDS CRISIS AREA CAPACITY BUILDING FUND.

§ 1-325.51. Funds for HIV/AIDS Crisis Area Capacity Building.

(a) There is established a revolving HIV/AIDS Crisis Area Capacity Building Fund, to be administered by the Mayor, for the purposes of providing loans and grants of up to \$500,000 to develop, support, expand, repair, or improve service delivery to persons with HIV/AIDS within those Wards that did not receive grants from the HIV/AIDS Administration during fiscal year 2005.

(b) There is authorized to be appropriated out of the revenue of the District \$500,000 to carry out the purposes of this part.

(Oct. 20, 2005, D.C. Law 16-33, § 5232, 52 DCR 7503.)

Emergency legislation. — For temporary (90 day) addition, see § 5232 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — Law 16-33, the “Fiscal Year 2006 Budget Support Act of 2005”, was introduced in Council and assigned Bill No. 16-200 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 10, 2005, and June 21, 2005, respectively. Signed by the Mayor on July 26, 2005, it was assigned Act No. 16-166 and transmitted to

both Houses of Congress for its review. D.C. Law 16-33 became effective on October 20, 2005.

Short title. — Short title of subtitle M of title V of Law 16-33: Section 5231 of D.C. Law 16-33 provided that subtitle M of title V of the act may be cited as the HIV/AIDS Crisis Area Capacity Building Fund Act of 2005.

Mayor’s Orders. — Establishment of Mayor’s Task Force on HIV and AIDS, see Mayor’s Order 2005-198, December 16, 2005 (53 DCR 2687).

§ 1-325.52. Rulemaking.

By December 1, 2005, the Mayor shall issue proposed rules to implement the provisions of this part. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(Oct. 20, 2005, D.C. Law 16-33, § 5233, 52 DCR 7503.)

Emergency legislation. — For temporary (90 day) addition, see § 5233 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 1-325.51.

§ 1-325.53. HIV/AIDS Administration Capacity Building Fund report.

(a) By December 1, 2005, the Mayor, through the HIV/AIDS Administration within the Department of Health, shall provide to the Council a report that includes a comprehensive plan for distributing the funds from the Capacity

Building Fund to those wards that lack the infrastructure to provide preventative and maintenance services within the ward to persons living with HIV/AIDS.

(b) The Mayor shall submit to the Council no later than 180 days after the end of each fiscal year a report on the financial condition of the Capacity Building Fund, including the results of the operation of the fund for the preceding fiscal year and an analysis of the number of persons living with HIV/AIDS, by ward.

(Oct. 20, 2005, D.C. Law 16-33, § 5234, 52 DCR 7503.)

Emergency legislation. — For temporary (90 day) addition, see § 5234 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 1-325.51.

Part G

FEE COLLECTION INCENTIVE FUND.

§ 1-325.61. Fee Collection Incentive Fund.

(a) For the purposes of this section, the term:

(1) “Agency” means any District agency, except the Office of the Chief Financial Officer, involved in the collection of fees or fines on behalf of the District.

(2) “Base year” means the fiscal year in which supplementary revenue is collected.

(3) “Disbursal year” means the fiscal year after the base year.

(4) “Fees and fines” includes all collections subject to general appropriations, but shall not include funds which are earmarked for special purposes and accounted for or deposited in a special fund for such purposes.

(5) “Fund” means the Fee Collection Incentive Fund established under this section.

(6) “Supplementary revenue” means the amount of revenue from all fees and fines collected by an agency in the base year which exceeds the estimate of revenue from fees and fines for the agency in the base year budget and financial plan.

(b) There is established a fund designated as the Fee Collection Incentive Fund, which shall be a segregated account within the General Fund of the District of Columbia. All funds shall be deposited into the Fund without regard to fiscal year limitation and shall not revert to the fund balance of the General Fund of the District of Columbia at the end of any fiscal year or at any other time, but shall be continually available for the uses and purposes set forth in subsection (c) of this section, subject to authorization by Congress in an appropriations act.

(c) Five percent of supplementary revenue collected by an agency in the base year shall be deposited on an annual basis at the beginning of the disbursal

year in the Fund in an account established for the agency. The funds in the agency account may be expended for any authorized use in the disbursal year; provided, that the funds shall not be used by the agency for employee bonuses; provided further, that the expenditure of funds shall directly enhance the agency's efficiency. Any balance of funds in an account in the Fund at the end of the disbursal year shall be transferred to the General Fund of the District of Columbia.

(Oct. 20, 2005, D.C. Law 16-33, § 1152, 52 DCR 7503.)

Emergency legislation. — For temporary (90 day) addition, see §§ 1152, 1153 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 1-617.17.

Short title. — Short title of subtitle T of title

I of Law 16-33: Section 1151 of D.C. Law 16-33 provided that subtitle T of title I of the act may be cited as the Fee Collection Incentive Act of 2005.

Editor's notes. — Section 1153 of D.C. Law 16-33 provided that this subtitle part shall apply as of October 1, 2005.

Part H

GREATER SOUTHEAST COMMUNITY HOSPITAL CAPITAL EQUIPMENT FUND.

§ 1-325.71. Establishment of Greater Southeast Community Hospital Capital Equipment Fund.

(a) There is established as a nonlapsing fund the Greater Southeast Community Hospital Capital Equipment Fund ("Fund"), the funds of which shall be used by the Mayor for the sole purpose of purchasing and maintaining capital equipment at Greater Southeast Community Hospital.

(b)(1) If the Chief Financial Officer of the District of Columbia certifies, through a revised quarterly revenue estimate for fiscal year 2008, that local funds exceed the annual revenue estimates incorporated in the approved fiscal year 2008 budget and financial plan, any allocation of those additional revenues shall include a deposit into the Fund of an amount equal to the revenue generated by taxes and assessments of the properties in the District of Columbia described as Lots 3 and 4, Square 5919.

(2) The Fund may also receive monies from appropriations, federal grants, and revenues from any other source.

(3) All funds deposited into the Fund shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (a) of this section without regard to fiscal year limitation, subject to authorization by Congress.

(c) The Mayor shall conduct an annual audit of all income and expenditures of the Fund and provide the annual report to the Council.

(Sept. 18, 2007, D.C. Law 17-20, § 1072, 54 DCR 7052.)

Emergency legislation. — For temporary (90 day) addition, see § 1072 of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

Legislative history of Law 17-20. — Law 17-20, the “Fiscal Year 2008 Budget Support Act of 2007”, was introduced in Council and assigned Bill No. 17-148 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May

15, 2007, and June 5, 2007, respectively. Signed by the Mayor on June 28, 2007, it was assigned Act No. 17-63 and transmitted to both Houses of Congress for its review. D.C. Law 17-20 became effective on September 18, 2007.

Short title. — Short title: Section 1071 of D.C. Law 17-20 provided that subtitle H of title I of the act may be cited as the “Greater Southeast Community Hospital Capital Equipment Fund Establishment Act of 2007”.

Part I

FEMS SPECIAL EVENTS FEE FUND.

§ 1-325.81. FEMS Special Events Fee Fund.

(a) There is established as a lapsing fund the FEMS Special Events Fee Fund (“Fund”) to be used for the purposes set forth in subsection (b) of this section and into which shall be deposited all fees assessed and collected under § 47-2826 to cover the costs of the Fire and Emergency Medical Services Department in providing services for special events.

(b) The Fund shall be used for expenses related to the Fire and Emergency Medical Services Department’s provision of services for special events, including:

- (1) Personnel costs;
- (2) Equipment;
- (3) Supplies;
- (4) Training;
- (5) Risk reduction; and
- (6) Repairs and maintenance of equipment and supplies.

(c) All funds deposited into the Fund shall be used exclusively for the purposes set forth in subsection (b) of this section. Any unexpended monies in the Fund at the end of a fiscal year shall revert to the unrestricted fund balance of the General Fund of the District of Columbia.

(Sept. 18, 2007, D.C. Law 17-20, § 3052, 54 DCR 7052; Sept. 14, 2011, D.C. Law 19-21, § 9103, 58 DCR 6226.)

Effect of amendments. — D.C. Law 19-21, in subsec. (a), substituted “lapsing” for “nonlapsing”; and, in subsec. (c), substituted “be used exclusively for the purposes set forth in subsection (b) of this section. Any unexpended monies in the Fund at the end of a fiscal year shall revert to the unrestricted fund balance of the General Fund of the District of Columbia” for “shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (b) of this section without

regard to fiscal year limitation, subject to authorization by Congress”.

Emergency legislation. — For temporary (90 day) enactments, see §§ 3042, 3052 of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

Legislative history of Law 17-20. — Law 17-20, the “Fiscal Year 2008 Budget Support Act of 2007”, was introduced in Council and assigned Bill No. 17-148 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 15, 2007, and June 5, 2007, respectively. Signed

by the Mayor on June 28, 2007, it was assigned Act No. 17-63 and transmitted to both Houses of Congress for its review. D.C. Law 17-20 became effective on September 18, 2007.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 1-301.01.

Short title. — Short title: Section 3051 of D.C. Law 17-20 provided that subtitle F of title III of the act may be cited as the “FEMS Special Events Fee Fund Establishment Act of 2007”.

Part J

SOLID WASTE DISPOSAL COST RECOVERY SPECIAL ACCOUNT.

§ 1-325.91. Solid Waste Disposal Cost Recovery Special Account.

(a) There is established as a lapsing fund the Solid Waste Disposal Cost Recovery Special Account, into which shall be deposited all solid waste disposal transfer fee and disposal fee revenues, less any recycling surcharge, owed and accruing to the District.

(b) All funds deposited into the Solid Waste Disposal Cost Recovery Special Account shall be used for the purposes set forth in subsection (c) of this section. Any monies not expended at the end of a fiscal year shall revert to the unrestricted fund balance of the General Fund of the District of Columbia.

(c) The Solid Waste Disposal Cost Recovery Special Account shall be used to defray the expenses of operating, maintaining, and improving the District’s solid waste transfer facilities, and to dispose of solid waste delivered to those facilities.

(Sept. 18, 2007, D.C. Law 17-20, § 6013, 54 DCR 7052; Sept. 14, 2011, D.C. Law 19-21, § 9099, 58 DCR 6226.)

Effect of amendments. — D.C. Law 19-21, in subsec. (a), substituted “lapsing” for “nonlapsing”; and, in subsec. (b), substituted “be used for the purposes set forth in subsection (c) of this section. Any monies not expended at the end of a fiscal year shall revert to the unrestricted fund balance of the General Fund of the District of Columbia.” for “not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (c) of this section without regard to fiscal year limitation, subject to authorization by Congress.”

Emergency legislation. — For temporary (90 day) addition, see § 6013 of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

For temporary (90 day) amendment of section, see § 8006 of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) amendment of section, see § 8006 of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 17-20. — Law 17-20, the “Fiscal Year 2008 Budget Support Act of 2007”, was introduced in Council and assigned Bill No. 17-148 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 15, 2007, and June 5, 2007, respectively. Signed by the Mayor on June 28, 2007, it was assigned Act No. 17-63 and transmitted to both Houses of Congress for its review. D.C. Law 17-20 became effective on September 18, 2007.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 1-301.01.

Short title. — Short title: Section 6011 of D.C. Law 17-20 provided that subtitle B of title VI of the act may be cited as the “Solid Waste Disposal Cost Recovery Act of 2007”.

Part K

ANTI-GRAFFITI MURAL ASSISTANCE PROGRAM FUND.

§ 1-325.101. Anti-Graffiti Mural Assistance Program Fund.

(a) There is established as a nonlapsing fund the Anti-Graffiti Mural Assistance Program Fund ("Fund"), which shall be used solely for the purposes set forth in subsections (c) and (d) of this section, and administered by the Office of the Director of the Department of Public Works.

(b) All funds deposited into the Fund shall not revert to the unrestricted fund balance of the General Fund of the District at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsections (c) and (d) of this section without regard to fiscal year limitation, subject to authorization by Congress.

(c) The Director of the Department of Public Works ("Director") shall:

(1) Ensure that the Fund is used solely to provide grants to qualified corporations;

(2) Provide such direction to the qualified corporations as is needed to ensure that the Fund is used solely for purposes described in this part;

(3) Identify and prioritize for the production of mural art locations in the District that have been targeted or are likely to be targeted for graffiti and are appropriate for mural art; and

(4) Oversee all aspects of the production of mural art for which Fund monies have been provided.

(d) Regarding the production of any mural art for which Fund monies have been provided, the qualified corporation shall:

(1) Expend the monies solely in connection with the production of mural art, including training, supervising, and compensating the mural artists, at locations identified by the Department of Public Works;

(2) Where the Department of Public Works has prioritized the locations at which mural art is to be produced, expend the monies in a manner that reflects those priorities;

(3) Consult with the Department of Public Works on all aspects of the production of mural art;

(4) Administer and manage the program so as to ensure that the production or any phase of the production of mural art is complete by any deadline established by the Director; and

(5) Provide the Director with a program and budget report no less than twice annually.

(e) For the purposes of subsections (c) and (d) of this section, the term "qualified corporation" means a nonprofit corporation incorporated in the District that provides education, training, funding, and supervision for the creation of mural art within the District.

(Sept. 18, 2007, D.C. Law 17-20, § 6082, 54 DCR 7052.)

Emergency legislation. — For temporary (90 day) addition, see § 6082 of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

Legislative history of Law 17-20. — Law 17-20, the “Fiscal Year 2008 Budget Support Act of 2007”, was introduced in Council and assigned Bill No. 17-148 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May

15, 2007, and June 5, 2007, respectively. Signed by the Mayor on June 28, 2007, it was assigned Act No. 17-63 and transmitted to both Houses of Congress for its review. D.C. Law 17-20 became effective on September 18, 2007.

Short title. — Short title: Section 6081 of D.C. Law 17-20 provided that subtitle I of title VI of the act may be cited as the “Anti-Graffiti Mural Assistance Program Fund Establishment Act of 2007”.

Part L

BUSINESS IMPROVEMENT DISTRICT LITTER CLEANUP ASSISTANCE FUND.

§ 1-325.111. Business Improvement District Litter Cleanup Assistance Fund.

(a) There is established as a nonlapsing fund the Business Improvement District Litter Cleanup Assistance Fund (“Fund”), which shall be used solely for the purposes set forth in subsection (c) of this section, and administered by the Office of the Director of the Department of Public Works.

(b)(1) All funds deposited into the Fund shall not revert to the unrestricted fund balance of the General Fund of the District at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (c) of this section without regard to fiscal year limitation, subject to authorization by Congress.

(2) Any funds that are transferred through intra-District funding and are not expended in any fiscal year shall revert to the Fund and be available for use in the subsequent fiscal year.

(c)(1) The Fund shall be used solely to provide grants to qualified corporations to support the corporations’ litter removal efforts within their respective Business Improvement District areas.

(2) No corporation shall receive monies from the Fund in excess of \$125,000 during any 12-month period.

(3) Where more than one qualified corporation representing the same geographic area applies for a grant pursuant to this part, preference shall be given to the corporation whose contract or contracts with professional litter cleanup services are longer-standing.

(4) For the purposes of this subsection, the term “qualified corporation” means:

(A) A “BID corporation,” as that term is defined in § 2-1215.02(4), that has an annual budget of less than \$1 million;

(B) A Main Street organization duly incorporated with a current letter of agreement with the Local, Small and Disadvantaged Business Enterprise Business Center; or

(C) A “Ward 4 BID Demonstration Project” as that term is used in section 8004(e)(3) of the Designated Appropriation Allocation Act of 2008, effective August 16, 2008 (D.C. Law 17-219; 55 DCR 7602).

(Sept. 18, 2007, D.C. Law 17-20, § 6092, 54 DCR 7052; Mar. 3, 2010, D.C. Law 18-111, § 2211, 57 DCR 181.)

Effect of amendments. — D.C. Law 18-111, in subsec. (b)(2), substituted “Fund and be available for use in the subsequent fiscal year” for “Fund”; and, in subsec. (c)(4), deleted “or” from the end of subpar. (A), substituted “; or” for a period at the end of subpar. (B), and added subpar. (C).

Emergency legislation. — For temporary (90 day) addition, see § 6092 of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

For temporary (90 day) amendment of section, see § 2211 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 2211 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 17-20. — Law 17-20, the “Fiscal Year 2008 Budget Support

Act of 2007”, was introduced in Council and assigned Bill No. 17-148 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 15, 2007, and June 5, 2007, respectively. Signed by the Mayor on June 28, 2007, it was assigned Act No. 17-63 and transmitted to both Houses of Congress for its review. D.C. Law 17-20 became effective on September 18, 2007.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 1-301.181.

Short title. — Short title: Section 6091 of D.C. Law 17-20 provided that subtitle J of title VI of the act may be cited as the “Business Improvement District Litter Cleanup Assistance Fund Establishment Act of 2007”.

Short title: Section 2210 of D.C. Law 18-111 provided that subtitle V of title II of the act may be cited as the “Business Improvement District Litter Cleanup Assistance Fund Establishment Amendment Act of 2009”.

Part M

COMMUNITY-BASED VIOLENCE REDUCTION FUND.

§ 1-325.121. Establishment of Community-Based Violence Reduction Fund.

(a)(1) There is established as a nonlapsing fund the Community-based Violence Reduction Fund (“Fund”).

(2) All funds deposited into the Fund, and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year or at any other time, but shall be continually available for the uses and purposes set forth in subsection (b) of this section without regard to fiscal year limitation, subject to authorization by Congress.

(b) The funds in the Fund shall be used only for the purpose of giving grants to community-based organizations in accordance with criteria to be established, and uniformly applied, by the Justice Grants Administration.

(c) Not more than 5% of the total amount of monies in the Community-Based Violence Reduction Fund in any given fiscal year may be used to pay administrative costs necessary to implement the requirements of this section.

(Aug. 16, 2008, D.C. Law 17-219, § 3014, 55 DCR 7598.)

Legislative history of Law 17-219. — Law 17-219, the “Fiscal Year 2009 Budget Support Act of 2008”, was introduced in Council and assigned Bill No. 17-678, which was referred to

the Committee of the Whole. The Bill was adopted on first and second readings on May 13, 2008, and June 3, 2008, respectively. Signed by the Mayor on June 26, 2008, it was assigned

Act No. 17-419 and transmitted to both Houses of Congress for its review. D.C. Law 17-219 became effective on August 16, 2008.

Short title. — Short title: Section 3013 of

D.C. Law 17-219 provided that subtitle F of title III of the act may be cited as the “Community-based Violence Reduction Fund”.

Part N

PEDESTRIAN AND BICYCLE SAFETY AND ENHANCEMENT FUND.

§ 1-325.131. Establishment of Pedestrian and Bicycle Safety and Enhancement Fund.

(a) There is established as a nonlapsing fund the Pedestrian and Bicycle Safety and Enhancement Fund (“Fund”), which shall be allocated \$1.5 million per fiscal year from the fines generated from the enhanced neighborhood parking control initiative. In addition, all receipts from fines and penalties collected due to increases in civil fines and new civil infractions established by section 3 of D.C. Law 17-269 [18 DCMR 303.2(bb) and (cc), 18 DCMR 2208.11, 18 DCMR 2208.12 and 18 DCMR 2600.1], shall be deposited into the fund. The Fund shall be used solely for the purposes set forth in subsection (b) of this section and administered by the Office of the Director of the District Department of Transportation (“DDOT”).

(b)(1) The Fund shall be used solely to enhance the safety and quality of pedestrian and bicycle transportation, including traffic calming and Safe Routes to School enhancements.

(2) The Director of DDOT shall prioritize resources from the Fund for instances requiring faster or more flexible planning, design, and construction than that which would be accomplished through existing federal and local funding sources.

(c)(1) All funds deposited into the Fund, and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (b) of this section without regard to fiscal year limitation, subject to authorization by Congress.

(2) Any funds that are transferred through intra-District transfers and are not expended in a fiscal year shall revert to the Fund.

(Aug. 16, 2008, D.C. Law 17-219, § 6021, 55 DCR 7598; Nov. 25, 2008, D.C. Law 17-269, § 5, 55 DCR 11015.)

Effect of amendments. — D.C. Law 17-269, in subsec. (a), inserted “In addition, all receipts from fines and penalties collected due to increases in civil fines and new civil infractions established by section 3 of D.C. Law 17-269 shall be deposited into the fund.”

Temporary Addition of Section. — Sec-

tion 104 of D.C. Law 17-326 added a section to read as follows:

“Sec. 104. Health Programs Contingency Fund.

“(a) There is established as a nonlapsing fund the Health Programs Contingency Fund (‘Fund’). All funds deposited into the Fund, and

any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of the fiscal year, or at any other time, but shall be continually available to support unanticipated expenditures within the District Medicaid program and the DC HealthCare Alliance.

“(b) By December 1, 2009, there shall be deposited into the Fund no less than \$10 million in local funds.”

Section 201(b) of D.C. Law 17-326 added section 6021a to D.C. Law 17-219 read as follows: “This act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan.”

Section 402(b) of D.C. Law 17-326 provided that the act shall expire after 225 days of its having taken effect.

Legislative history of Law 17-219. — Law 17-219, the “Fiscal Year 2009 Budget Support Act of 2008”, was introduced in Council and assigned Bill No. 17-678, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 13, 2008, and June 3, 2008, respectively. Signed

by the Mayor on June 26, 2008, it was assigned Act No. 17-419 and transmitted to both Houses of Congress for its review. D.C. Law 17-219 became effective on August 16, 2008.

Legislative history of Law 17-269. — Law 17-269, the “Pedestrian Safety Enforcement Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-539 which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on July 15, 2008, and September 16, 2008, respectively. Signed by the Mayor on September 30, 2008, it was assigned Act No. 17-522 and transmitted to both Houses of Congress for its review. D.C. Law 17-269 became effective on November 25, 2008.

Short title. — Short title: Section 6020 of D.C. Law 17-219 provided that subtitle G of title VI of the act may be cited as the “Pedestrian and Bicycle Safety and Enhancement Fund Establishment Act of 2008”.

References in text. — D.C. Law 17-269, § 3, referred to in subsec. (a), amended Title 18 of the District of Columbia Municipal Regulations.

Part O

VETERANS APPRECIATION SCHOLARSHIP FUND.

§ 1-325.141. Veterans Appreciation Scholarship Fund.

(a) There is established as a nonlapsing fund the Veterans Appreciation Scholarship Fund “Fund”, which shall be used solely for the purposes set forth in subsection (c) of this section. The Fund shall be funded by appropriations.

(b) All funds deposited into the Veterans Appreciation Scholarship Fund, and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (a) of this section without regard to fiscal year limitation, subject to authorization by Congress.

(c) Subject to the availability of funds in the Fund, United States military personnel whose service began on or after September 11, 2001, and who are residents of the District of Columbia shall be granted reimbursement of tuition, fees, books, and other materials from the Fund for undergraduate and graduate courses at the University of the District of Columbia for a period of 4 years after their return from active duty.

(Mar. 20, 2009, D.C. Law 17-312, § 2, 56 DCR 35.)

Emergency legislation. — For temporary (90 day) addition, see § 1291 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) addition, see § 1291 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 17-312. — Law 17-312, the “Veterans Appreciation Scholarship Fund Establishment Act of 2008”, was introduced in Council and assigned Bill No. 17-27 which was referred to the Committee on Workforce Development and Government Operations. The Bill was adopted on first and second

readings on November 18, 2008, and December 2, 2008, respectively. Signed by the Mayor on December 19, 2008, it was assigned Act No. 17-612 and transmitted to both Houses of Congress for its review. D.C. Law 17-312 became effective on March 20, 2009.

Part P

CAPITAL PROJECT SUPPORT FUND.

§ 1-325.151. Definitions.

For the purposes of this part, the term:

(1) “Surplus bond funds” means proceeds from the District’s bond issuances, including general obligation bonds and income tax secured revenue bonds that are designated to fund certain capital projects and which:

(A) Remain available after the authorized project has been completed or the funds no longer considered necessary;

(B) For a project with a balance of more than \$250,000, no funds have been expended or encumbered for 3 consecutive years, and the agency has not notified the Chief Financial Officer within 30 days of the end of the 3-year period that the agency intends to use the funds to implement the project within 18 months; or

(C) For a project with a balance of \$250,000 or less, no funds have been expended or encumbered for 3 consecutive years.

(2) “Surplus non-bond funds” means funds from sources other than proceeds from the District’s bond issuances designated to fund certain capital projects and which:

(A) Remain available after the authorized project has been completed or the funds no longer considered necessary;

(B) For a project with a balance of more than \$250,000, no funds have been expended or encumbered for 3 consecutive years, and the agency has not notified the Chief Financial Officer within 30 days of the end of the 3-year period that the agency intends to use the funds to implement the project within 18 months; or

(C) For a project with a balance of \$250,000 or less, no funds have been expended or encumbered for 3 consecutive years.

(Mar. 3, 2010, D.C. Law 18-111, § 1261, 57 DCR 181.)

Emergency legislation. — For temporary (90 day) addition, see § 1041 of Fiscal Year 2010 Budget Support Emergency Act of 2009 (D.C. Act 18-187, August 26, 2009, 56 DCR 7374).

For temporary (90 day) addition, see § 1261 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) addition, see § 1261

of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 18-111. — Law 18-111, the “Fiscal Year 2010 Budget Support Act of 2009”, was introduced in Council and assigned Bill No. 18-203, which was referred to the Committee on the Whole. The bill was adopted on first and second readings on May

12, 2009, and September 22, 2009, respectively. Signed by the Mayor on December 18, 2009, it was assigned Act No. 18-255 and transmitted to both Houses of Congress for its review. D.C. Law 18-111 became effective on March 3, 2010.

Short title. — Short title: Section 1260 of D.C. Law 18-111 provided that subtitle AA of title I of the act may be cited as the “Capital Project Support Fund Establishment Act of 2009”.

Short title: Section 1290 of D.C. Law 18-111 provided that subtitle DD of title I of the act

may be cited as the “DCPL Capital Project Fund Designation Act of 2009”.

Editor’s notes. — Section 1291 of D.C. Law 18-111 provided:

Sec.1291. District of Columbia Public Library capital funds. “All capital funds for the District of Columbia Public Library shall be separated by individual library project with available balances for each project and funding priority shall be given to wards where no renovation project exceeding \$2.5 million in value has been undertaken since fiscal year 2006.”

§ 1-325.152. Capital Project Support Fund; establishment.

(a) There is established the Capital Project Support Fund (“Fund”) to be used to provide funding for qualified capital projects, within which shall be established 2 accounts. One account shall be designated the Bond Account and the other account shall be designated the Non-Bond Account.

(b) All surplus bond funds identified by the Chief Financial Officer shall be deposited into the Bond Account.

(c) All surplus non-bond funds identified by the Chief Financial Officer shall be deposited into the Non-Bond Account, including those from the Local Street Maintenance Fund, Master Equipment Lease/Purchase financing, Sale of Assets and Pay-as-You-Go capital funding, but excluding federal grants and Federal Highway Trust Fund.

(Mar. 3, 2010, D.C. Law 18-111, § 1262, 57 DCR 181.)

Emergency legislation. — For temporary (90 day) addition, see § 1042 of Fiscal Year 2010 Budget Support Emergency Act of 2009 (D.C. Act 18-187, August 26, 2009, 56 DCR 7374).

For temporary (90 day) addition, see § 1262 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) addition, see § 1262 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 18-111. — For Law 18-111, see notes following § 1-325.151.

§ 1-325.153. Expenditures from Fund.

(a) Funding for an approved capital project may be provided through redirection in an approved budget and financial plan or through a reprogramming, pursuant to Chapter 3 of Title 47.

(b) Within 30 days of a request by the Mayor to reprogram the money in the Fund to an approved capital project, the Chief Financial Officer shall certify that the funds are available and the expenditure to support the project is in compliance with this part. If a project is to receive funds from both the Bond Account and the Non-Bond Account, the Chief Financial Officer shall also certify the amount to be funded from each account.

(Mar. 3, 2010, D.C. Law 18-111, § 1263, 57 DCR 181.)

Emergency legislation. — For temporary (90 day) addition, see § 1043 of Fiscal Year 2010 Budget Support Emergency Act of 2009 (D.C. Act 18-187, August 26, 2009, 56 DCR 7374).

For temporary (90 day) addition, see § 1263 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) addition, see § 1263 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 18-111. — For Law 18-111, see notes following § 1-325.151.

§ 1-325.154. Reporting requirements.

(a) The Chief Financial Officer shall submit a written report to the Mayor and the Council on a quarterly basis on the status of the Fund, including the current balance of the Fund, specifying the amount in each account, and a list of the projects supported by the Fund, specifying the account.

(b) An agency that receives an extension pursuant to § 1-325.151(1)(B) or (2)(B) shall submit an activity report and schedule for completion within 120 days of the start of the extension.

(Mar. 3, 2010, D.C. Law 18-111, § 1264, 57 DCR 181.)

Emergency legislation. — For temporary (90 day) addition, see § 1044 of Fiscal Year 2010 Budget Support Emergency Act of 2009 (D.C. Act 18-187, August 26, 2009, 56 DCR 7374).

For temporary (90 day) addition, see § 1264 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) addition, see § 1264 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 18-111. — For Law 18-111, see notes following § 1-325.151.

§ 1-325.155. Washington Metropolitan Area Transit Authority project.

(a) Notwithstanding any other provision of this part, the budget authority for an approved capital project shall be reprogrammed, pursuant to Chapter 3 of Title 47, for use pursuant to subchapter IV-A of Chapter 11 of Title 9 [§ 9-1108.01 et seq.]; provided, that:

(1) The capital project has been completed or the funds no longer considered necessary and budget authority remain available;

(2) For a capital project with a balance of more than \$250,000, no funds have been expended or encumbered for 3 consecutive years, and the agency has not notified the Chief Financial Officer within 30 days of the end of the 3-year period that the agency intends to use the funds to implement the project within 18 months; or

(3) For a capital project with a remaining budget authority of \$250,000 or less, the capital project has not been funded for 3 consecutive years.

(b) If at any time the Chief Financial Officer determines that certain funds are not needed to meet the requirements of the WMATA project, those funds may be reprogrammed, pursuant to Chapter 3 of Title 47, to any capital project that the Chief Financial Officer certifies a funding need.

(Mar. 3, 2010, D.C. Law 18-111, § 1265, 57 DCR 181.)

Emergency legislation. — For temporary (90 day) addition, see § 1045 of Fiscal Year 2010 Budget Support Emergency Act of 2009 (D.C. Act 18-187, August 26, 2009, 56 DCR 7374).

For temporary (90 day) addition, see § 1265 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) addition, see § 1265

of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

For temporary (90 day) addition of section, see § 603 of Fiscal Year 2011 Supplemental Budget Support Emergency Act of 2010 (D.C. Act 18-694, January 19, 2011, 58 DCR 662).

Legislative history of Law 18-111. — For Law 18-111, see notes following § 1-325.151.

Part Q

SENIOR HOUSING MODERNIZATION GRANT FUND.

§ 1-325.161. Definitions.

For the purposes of this part, the term:

(1) “Deputy Mayor” means the Deputy Mayor for Planning and Economic Development.

(2) “Fund” means the Senior Citizens Housing Modernization Grant Fund established by § 1-325.162.

(3) “Planned unit development” or “PUD” means a plan for the development of residential, institutional, and commercial developments, industrial parks, urban renewal projects, or a combination of these as defined in section 199 of Title 11 of the District of Columbia Municipal Regulations (11 DCMR § 199).

(4) “Principal place of residence” means a single-family dwelling in which a person lives in a particular locality with the intent to make it a fixed and permanent home.

(5) “Qualified senior citizen” means the owner of a single-family dwelling located in the District that is his or her principal place of residence who:

(A) Is 65 years of age or older;

(B) Is a resident of the District;

(C) Has resided in his or her principal place of residence for at least 3 years preceding the date of the application for assistance under this part; and

(D) Whose income does not exceed that for a household within the Section 8 low-income guidelines established by the Secretary of the United States Department of Housing and Urban Development pursuant to section 8 of the United States Housing Act of 1937, approved August 22, 1974 (88 Stat. 662; 42 U.S.C. § 1437f).

(Aug. 12, 2010, D.C. Law 18-218, § 2, 57 DCR 5396.)

Legislative history of Law 18-218. — Law 18-218, the “Senior Housing Modernization Grant Fund Act of 2010”, was introduced in Council and assigned Bill No. 18-250, which was referred to the Committee on Economic Development. The Bill was adopted on first and

second readings on May 18, 2010, and June 1, 2010, respectively. Signed by the Mayor on June 17, 2010, it was assigned Act No. 18-440 and transmitted to Both Houses of Congress for its review. D.C. Law 18-218 became effective on August 12, 2010.

§ 1-325.162. Senior Citizens Housing Modernization Grant Fund.

(a) There is established as a nonlapsing fund the Senior Citizens Housing Modernization Grant Fund ("Fund"). All funds deposited into the Fund, and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (b) of this section without regard to fiscal year limitation, subject to authorization by Congress.

(b) The Fund shall be continually available to the Deputy Mayor for the purpose of providing one-time grants of up to \$5,000 to qualified senior citizens to enable them to make repairs and improvements to their single-family dwellings to ensure their health and safety in their principal places of residence.

(c) Deposits into the Fund shall consist of the following:

(1) Payments by developers seeking relief from zoning laws by way of the PUD process, which may be considered part of the required community benefits package of the proposed PUD;

(2) Appropriated funds;

(3) Other District funds; or

(4) Private gifts.

(Aug. 12, 2010, D.C. Law 18-218, § 3, 57 DCR 5396.)

Legislative history of Law 18-218. — For Law 18-218, see notes following § 1-325.161.

§ 1-325.163. Eligibility for grants.

(a)(1) An applicant shall receive a grant if he or she is a qualified senior citizen residing within the boundaries of an Advisory Neighborhood Commission in which a developer, seeking relief from zoning laws by way of the PUD process, has made a payment to the Senior Citizens Housing Modernization and Grant Fund.

(2) An applicant is eligible for a grant if he or she is a qualified senior citizen, provided, that the Deputy Mayor gives priority consideration to lower-income applicants.

(b) To determine the eligibility of an applicant, the Deputy Mayor shall develop an application form.

(c) To apply for a grant under this part, an applicant shall complete the application form and return it to the Deputy Mayor at the time and in the manner in which the Deputy Mayor shall prescribe.

(d) The Deputy Mayor shall verify the contents of the application form to determine if the applicant is eligible for a grant and to determine if the applicant shall receive funding, or be given priority consideration pursuant to subsection (a) of this section.

(e) The Deputy Mayor shall establish rules for payment to qualified home

improvement contractors, which may include establishing a list of program-eligible contractors.

(Aug. 12, 2010, D.C. Law 18-218, § 4, 57 DCR 5396.)

Legislative history of Law 18-218. — For Law 18-218, see notes following § 1-325.161.

§ 1-325.164. Rules.

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], shall issue rules to implement the provisions of this part. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(Aug. 12, 2010, D.C. Law 18-218, § 5, 57 DCR 5396.)

Legislative history of Law 18-218. — For Law 18-218, see notes following § 1-325.161.

Part R

H STREET RETAIL PRIORITY AREA FUND.

§ 1-325.171. Definitions.

For the purposes of this part, the term:

(1) “Chief Financial Officer” means the Chief Financial Officer established by § 1-204.24(a).

(2) “DMPED” means the Office of the Deputy Mayor for Planning and Economic Development established by Mayor’s Order 99-62 (April 9, 1999).

(3) “Developer Sponsor” shall have the same meaning as provided in § 47-4634(1).

(4) “H Street Real Property Tax Increment Revenue” means the portion of the real property tax imposed by Chapter 8 of Title 47 of the District of Columbia Official Code on real property in the H Street, N.E., Retail Priority Area in any fiscal year that exceeds the amount of the real property tax imposed on the real property in the H Street, N.E., Retail Priority Area in the fiscal year ended September 30, 2007.

(5) “H Street, N.E., Retail Priority Area” means the H Street, N.E., Retail Priority Area as defined in section 2(2) of the Great Streets Neighborhood Retail Priority Areas Approval Resolution of 2007, effective July 10, 2007 (Res. 17-257; 54 DCR 7194), which includes the parcels, squares, and lots within the area bounded by a line beginning at the intersection of the center lines of Massachusetts Avenue, N.E., Columbus Circle, N.E., and 1st Street, N.E.; continuing northeast along the center line of 1st Street, N.E., to the center line

of K Street, N.E.; continuing east along the center line of K Street, N.E., to the center line of Florida Avenue, N.E.; continuing southeast along the center line of Florida Avenue, N.E., to the center line of Staples Street, N.E.; continuing northeast along the center line of Staples Street, N.E., to the center line of Oates Street, N.E.; continuing southeast along the center line of Oates Street, N.E., until the point where Oates Street, N.E., becomes K Street, N.E.; continuing east along the center line of K Street, N.E., to the center line of 17th Street, N.E.; continuing south along the center line of 17th Street, N.E., to the center line of Gales Street, N.E.; continuing northwest along the center line of Gales Street, N.E., to the center line of 15th Street, N.E.; continuing south along the center line of 15th Street, N.E., to the center line of F Street, N.E.; continuing west along F Street, N.E., to the center line of Columbus Circle, N.E.; and continuing south and circumferentially along the center line of Columbus Circle, N.E., to the beginning point.

(6) “H Street Retail Developer” means a person or corporation that proposes to, or provides technical assistance to, engage in the business of sale of personal property for use or consumption by the purchasers at locations in the H Street, N.E., Retail Priority Area.

(7) “H Street Sales Tax Increment Revenue” means the portion of the sales tax imposed by Chapter 20 of Title 47 on goods and services sold in the H Street, N.E., Retail Priority Area in any fiscal year that exceeds the amount of the sales tax imposed in the H Street, N.E., Retail Priority Area in the fiscal year ended September 30, 2007.

(Apr. 8, 2011, D.C. Law 18-354, § 2, 58 DCR 754.)

Emergency legislation. — For temporary (90 day) amendment of section, see § 2162(a) of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) amendment of section, see § 2162(a) of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 18-354. — Law

18-354, the “H Street, N.E., Retail Priority Area Incentive Act of 2010”, was introduced in Council and assigned Bill No. 18-970, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on December 7, 2010, and December 21, 2010, respectively. Signed by the Mayor on January 19, 2011, it was assigned Act No. 18-704 and transmitted to both Houses of Congress for its review. D.C. Law 18-354 became effective on April 8, 2011.

§ 1-325.172. Establishment of the H Street Retail Priority Area Grant Fund.

(a) There is established as a nonlapsing fund outside the General Fund of the District of Columbia a fund designated as the H Street Retail Priority Area Grant Fund. The Chief Financial Officer shall pay upon April 8, 2011, an amount not to exceed \$5 million annually, but not to exceed \$25 million in the aggregate, of the H Street Real Property Tax Increment Revenue and the H Street Sales Tax Increment Revenue into the H Street Retail Priority Area Grant Fund.

(b) All funds deposited into the H Street Retail Priority Area Grant Fund, and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a

fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (c) of this section without regard to fiscal year limitation, subject to authorization by Congress.

(c) DMPED shall use a portion of each of the \$5 million annual allocations into the H Street Retail Priority Area Grant Fund as follows:

(1)(A) Repay the General Fund of the District of Columbia annually for all tax abatements to the Developer Sponsor.

(B) The value of the tax abatements to the Developer Sponsor shall not exceed \$5 million in the aggregate; and

(2) Make grants to H Street Retail Developers in accordance with § 1-325.173.

(d) The Mayor shall prepare and deliver an annual report to the Council each year on January 1st. The annual report shall contain a listing and description of each grant issued from the H Street Retail Priority Area Grant Fund pursuant to this part. Each listing shall contain specific information about the nature of the grant, the grantee, the use of the grant funds, the projected number of new jobs created for District residents, the projected economic benefit to the District, and any other information the Council may request regarding each grant.

(Apr. 8, 2011, D.C. Law 18-354, § 3, 58 DCR 754.)

Legislative history of Law 18-354. — For history of Law 18-354, see notes under § 1-325.171.

§ 1-325.173. H Street, N.E., Retail Priority Area business development.

(a) The Mayor shall publish no later than 120 days after April 8, 2011, and no less than annually after that date, a notice of funding availability to make grants to assist retail development projects which generate new jobs in new or improved existing retail space in the H Street, N.E., Retail Priority Area.

(b) Eligible retail development projects shall include retail businesses engaged in the sale of home furnishings, apparel, books, art, groceries, and general merchandise goods to specialized customers. Special consideration shall be given to retail developments that include entrepreneurial and innovative retail elements. Eligible retail development projects shall not include liquor stores, restaurants, nightclubs, hair salons, barber shops, and phone stores.

(c) Eligibility for retail development projects shall include:

(1) Site control of the property either through fee simple ownership of the site or through an executed contract or lease with the property owner;

(2) Direct frontage on the H Street, N.E., corridor from 3rd Street, N.E., to 15th Street, N.E.;

(3) Total retail space which is not less than 1,200 square feet;

(4) Execution of a First Source Agreement with the District's Department of Employment Services; and

(5) Adherence to design, construction, and rehabilitation requirements as defined by DMPED.

(Apr. 8, 2011, D.C. Law 18-354, § 4, 58 DCR 754.)

Emergency legislation. — For temporary (90 day) amendment of section, see § 2162(b) of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) amendment of section, see § 2162(b) of Fiscal Year 2013 Budget

Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 18-354. — For history of Law 18-354, see notes under § 1-325.171.

Part S

WEST END LIBRARY AND FIRE STATION MAINTENANCE FUND.

§ 1-325.181. West End Library and Fire Station Maintenance Fund.

(a) There is established as a nonlapsing fund the West End Library and Fire Station Maintenance Fund, which shall be used solely to pay the expenses of providing supplemental maintenance service, insurance, and capital replacement for the West End Library and West End Fire Station along with those regularly provided by the District of Columbia Public Library and the Mayor, respectively, and ensuring that both facilities are maintained in a manner that is consistent with the high-quality conditions of the larger buildings of which they are a part.

(b) The Chief Financial Officer shall deposit into the Fund 85% of the Deed Transfer and Recordation Taxes attributable to the new buildings constructed on Lots 836, 837, and 855 in Square 37 (or such successor record or assessment and taxation lots as may be created through future subdivision or creation of condominium units).

(c) All funds deposited into the Fund, and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (a) of this section without regard to fiscal year limitation, subject to authorization by Congress.

(d)(1) The money in the Fund shall be available to be spent pursuant to the Maintenance Agreement. The allocation of monies between the West End Library and the West End Fire Station, to the extent not provided in the Maintenance Agreement, shall be decided jointly by the Board of Library Trustees and the Mayor.

(2) The Mayor shall submit to the Council, as a part of the annual budget, a requested appropriation for expenditures from the Fund. Any monies received but not expended in a given fiscal year shall be retained by the Fund.

(e) The Fund shall be audited annually by the Inspector General, who shall

transmit the audit report to the Mayor and Council no later than 90 days after close of the fiscal year. The annual audit shall include:

- (1) The assets, liabilities, fund balance, revenue, and expenditures of the Fund;
- (2) A detailed accounting of the Fund's expenditures; and
- (3) Identification of any Fund expenditures that were not permitted under the law.

(Apr. 8, 2011, D.C. Law 18-368, § 4, 58 DCR 991.)

Legislative history of Law 18-368. — Law 18-368, the “West End Parcels Development Omnibus Act of 2010”, was introduced in Council and assigned Bill No. 18-1076, which was referred to the Committee on Economic Development and the Committee on Finance and Revenue. The Bill was adopted on first and second readings on December 7, 2010, and December 21, 2010, respectively. Signed by the Mayor on January 27, 2011, it was assigned Act No. 18-719 and transmitted to both Houses of Congress for its review. D.C. Law 18-368 became effective on April 8, 2011.

Editor's notes. — Section 2 of D.C. Law 18-368 provided:

“Sec.2. Definitions.

“For the purposes of this act, the term:

“(1) ‘Deed Transfer and Recordation Taxes’ means the revenue resulting from the imposition of the taxes under section 303 of the District of Columbia Deed Recordation Tax Act of 1962, approved March 2, 1962 (76 Stat. 11; D.C. Official Code § 42-1103), and section 47-903 of the District of Columbia Official Code.

“(2) ‘Developer’ means Eastbanc-W.D.C. Partners, LLC., its successors, affiliates, and assigns, either collectively or individually.

“(3) ‘District Property’ means the West End Library Property, Special Operations/MPD Building Property, and the West End Fire Station Property, as defined in paragraph (9) of this section.

“(4) ‘Fund’ means the West End Library and Fire Station Maintenance Fund established by section 4.

“(5) ‘Fund Managers’ means the Chief Librarian of the District of Columbia Public Library and the Mayor.

“(6) ‘LDDA’ means the Land Development and Disposition Agreement between the District and the Developer pursuant to the West End Parcels Disposition Approval Resolution of

2010, effective July 13, 2010 (Res.18-553; 57 DCR 7623).

“(7) ‘Maintenance Agreement’ means a West End Library and Fire Station Maintenance Agreement by and among the Fund Managers, and Developer, or its successors, or assigns, and established pursuant to section 5.

“(8) ‘Project’ means the acquisition, development, construction, installation, and equipping of the multi-use project to be located on the Property, to include:

“(A) A new library, estimated to contain approximately 20,000 gross square feet;

“(B) A new fire station, estimated to contain approximately 16,000 gross square feet;

“(C) A residential building on Square 37 estimated to contain approximately 224,390 gross square feet with approximately 153 units;

“(D) A residential rental building, including affordable housing units in Square 50, subject to public financial assistance;

“(E) Retail space estimated to contain approximately 9,600 gross square feet; and

“(F) Below-grade parking.

“(9) ‘Property’ means the following parcels of land located in Squares 37 and 50 in the District:

“(A) Square 37, Lot 836 (‘West End Library Property’);

“(B) Square 37, Lot 837 (‘Special Operations/MPD Building Property’);

“(C) Square 37, Lot 855 (‘Developer Property’);

“(D) Square 50, Lot 822 (‘West End Fire Station Property’); and

“(E) Related air rights parcels.

“(10) ‘West End Fire Station’ means a new fire station in Square 50 in the West End to be constructed by the Developer pursuant to the LDDA.

“(11) ‘West End Library’ means a new neighborhood branch library to be constructed in Square 37 in the West End by the Developer pursuant to the LDDA.”

Part T

STREETSCAPE LOAN RELIEF FUND.

§ 1-325.191. Streetscape Loan Relief Fund.

(a) There is established as a nonlapsing fund the Streetscape Loan Relief Fund ("Fund"), which shall be used solely to make loans in accordance with subsection (c) of this section. The Fund shall be funded by annual appropriations; provided, that for fiscal year 2011, the amount deposited in the Fund shall be \$723,000. All funds received from repayments of loans shall be deposited into the Fund.

(b) All funds deposited into the Fund, and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (c) of this section without regard to fiscal year limitation, subject to authorization by Congress.

(c) If the District undertakes a streetscape construction or rehabilitation project, the Mayor, in his or her sole discretion, may make interest-free loans from the Fund to any individual or entity that operates a retail business inside or adjoining the streetscape construction or rehabilitation project. To obtain a loan, a retail business shall submit a loan application in the form and with the information that the Mayor shall require. The Mayor shall determine the terms and conditions of each loan based upon the loan application submitted by the retail business; provided, that the term of a loan pursuant to this section shall not exceed 5 years after the termination of the streetscape construction or rehabilitation project.

(d) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], may issue rules to implement the provisions of this section.

(Apr. 8, 2011, D.C. Law 18-370, § 603, 58 DCR 1008.)

Temporary Addition of Section. — Section 2 of D.C. Law 19-121 added a section to read as follows:

"Sec. 2. Authority to reconstruct building projections upon completion of 18th Street streetscape project.

"(a) Upon completion of the 18th Street streetscape project (capital project number SR036A), a building owner or any tenant of the building owner shall be permitted to reconstruct any building projection that existed before the commencement of the streetscape project and that was altered because of the streetscape project; provided, that the building projection is identical to the building projection that existed at the commencement of the streetscape project and the building owner, or the tenants of the building owner, obtains the building and construction permits required by law and pays the associated building and con-

struction permit fees; provided further, that reconstruction of any building projections for which no public space permit has been issued must be reconstructed as a temporary structure.

"(b) For the purposes of this section, the term:

"(1) 'Building projection' means a bay window, staircase, patio, sidewalk cafe, or other fixture attached to a building and located on public space.

"(2) 'Streetscape project' means a roadway reconstruction on a commercial main street."

Section 4(b) of D.C. Law 19-121 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition of section, see § 1032 of Fiscal Year 2012 Budget Support Emergency Act of 2011 (D.C. Act 19-93, June 29, 2011, 58 DCR 5599).

For temporary (90 day) addition of section, see § 2 of Streetscape Reconstruction Emergency Act of 2012 (D.C. Act 19-268, January 12, 2012, 59 DCR 211).

For temporary (90 day) addition of section, see § 2 of Streetscape Reconstruction Congressional Review Emergency Act of 2012 (D.C. Act 19-340, April 8, 2012, 59 DCR 2786).

Legislative history of Law 18-370. — Law 18-370, the “Fiscal Year 2011 Supplemental Budget Support Act of 2010”, was introduced in Council and assigned Bill No. 18-1100, which was referred to the Committee of the Whole. The Bill was adopted on first and second read-

ings on December 7, 2010, and December 21, 2010, respectively. Signed by the Mayor on January 27, 2011, it was assigned Act No. 18-721 and transmitted to both Houses of Congress for its review. D.C. Law 18-370 became effective on April 8, 2011.

Short title. — Short title: Section 601 of D.C. Law 18-370 provided that subtitle A of title VI of the act may be cited as “Streetscape Fund Amendment Act of 2010”.

Delegation of Authority. — Delegation of Authority pursuant to the Streetscape Fund Amendment Act of 2010, see Mayor’s Order 2011-128, July 29, 2011 (58 DCR 6692).

Part U

COUNCIL TECHNOLOGY PROJECTS FUND.

§ 1-325.201. Council Technology Projects Fund.

(a) There is established as a nonlapsing fund the Council Technology Projects Fund (“Fund”). All funds deposited into the Fund, and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (b) of this section without regard to fiscal year limitation, subject to authorization by Congress.

(b) The Fund shall be used solely for the purposes of maintaining and upgrading the technology used for the benefit of the Council and shall be administered by the Council’s Chief Technology Officer.

(c) The following shall be deposited into the Fund:

(1) All excess monies remaining in the operating budget for the Council of the District of Columbia at the end of each fiscal year;

(2) Any interest earned from the monies deposited into the Fund; and

(3) Any other funds received on behalf of the Fund or the Council for the purpose of maintaining and upgrading the technology for the Council.

(Sept. 14, 2011, D.C. Law 19-21, § 1082, 58 DCR 6226.)

Legislative history of Law 19-21. — Law 19-21, the “Fiscal Year 2012 Budget Support Act of 2011”, was introduced in Council and assigned Bill No. 19-203, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 25, 2011, and June 14, 2011, respectively. Signed by the Mayor on July 22, 2011, it was

assigned Act No. 19-98 and transmitted to both Houses of Congress for its review. D.C. Law 19-21 became effective on September 14, 2011.

Short title. — Short title: Section 1081 of D.C. Law 19-21 provided that subtitle H of title I of the act may be cited as “Council Technology Projects Fund Establishment Act of 2011”.

Subchapter XII. Customer Service Operations.

Part A

CITY WIDE CALL CENTER [REPEALED].

§ 1-327.01. Establishment of the Citywide Call Center. [Repealed].

Repealed.

(Oct. 19, 2000, D.C. Law 13-172, § 1002, 47 DCR 6308; Oct. 1, 2002, D.C. Law 14-190, § 1203(b)(2), 49 DCR 6968.)

Prior Codifications. — 1981 Ed., § 1-368.1.

Emergency legislation. — For temporary (90-day) addition of section, see § 1002 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see § 1002 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

For temporary (90 day) repeal of section, see

§ 1204 of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

Legislative history of Law 13-172. — For Law 13-172, see notes following § 1-307.03.

Legislative history of Law 14-190. — For Law 14-190, see notes following § 1-301.131.

Editor's notes. — Section 1203(b)(1) of D.C. Law 13-172 abolished the Citywide Call Center, established by § 1-327.01.

Section 17 of D.C. Law 15-105 made a technical amendment to D.C. Law 14-190 that did not affect this section.

§ 1-327.02. Duties. [Repealed].

Repealed.

(Oct. 19, 2000, D.C. Law 13-172, § 1003, 47 DCR 6308; Oct. 1, 2002, D.C. Law 14-190, § 1203(b)(2), 49 DCR 6968.)

Prior Codifications. — 1981 Ed., § 1-368.2.

Emergency legislation. — For temporary (90-day) addition of section, see § 1003 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see § 1003 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

For temporary (90 day) addition of §§ 1-

328.01 to 1-328.03, 1-328.04 see §§ 1201 to 1203, 1205 of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

For temporary (90 day) repeal of section, see § 1204 of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

Legislative history of Law 13-172. — For Law 13-172, see notes following § 1-307.03.

Legislative history of Law 14-190. — For Law 14-190, see notes following § 1-301.131.

Part B

CUSTOMER SERVICE OPERATIONS UNIT.

§ 1-327.31. Short title.

This part may be cited as the “Customer Service Operations Establishment Act of 2002”.

(Oct. 1, 2002, D.C. Law 14-190, § 1201, 49 DCR 6968.)

Prior Codifications. — 2001 Ed., § 1-328.01.

Legislative history of Law 14-190. — For Law 14-190, see notes following § 1-301.131.

§ 1-327.32. Establishment of the Customer Service Operations Unit; Duties.

(a) There is hereby established the Customer Service Operations Unit within the Executive Office of the Mayor.

(b) The Customer Service Operations Unit shall be the District of Columbia’s primary point of entry for citizens and customers attempting to access nonemergency services, solicit information, or register a complaint or comment about an agency. The calls to the Customer Service Operations Unit shall be tracked, monitored, and reported to all necessary agencies. The information collected from the calls to the Customer Service Center Operations Unit shall be used in determining where additional services are required, where specific services need improvement, and which current services are effective.

(Oct. 1, 2002, D.C. Law 14-190, § 1202, 49 DCR 6968.)

Prior Codifications. — 2001 Ed., § 1-328.02.

Emergency legislation. — For temporary (90 day) addition, see §§ 3202 to 3208 of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) addition, see §§ 3202 to 3208 of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 14-190. — For Law 14-190, see notes following § 1-301.131.

§ 1-327.33. Transfers; abolishment.

All personnel, property, records, functions, and unexpended balances of funds from the following agencies, offices, or units are transferred to the Customer Service Operations Unit, established pursuant to § 1-327.32:

- (1) The Citywide Call Center established in § 1-327.01 [repealed];
- (2) The Mayor’s Correspondence Unit, established in Mayor’s Order 73-172, issued November 5, 1973; and
- (3) The Tester Program in the Executive Office of the Mayor.

(Oct. 1, 2002, D.C. Law 14-190, § 1203(a), 49 DCR 6968.)

Prior Codifications. — 2001 Ed., § 1-328.03.

Legislative history of Law 14-190. — For Law 14-190, see notes following § 1-301.131.

§ 1-327.34. **Applicability.**

This part shall apply as of October 1, 2002.

(Oct. 1, 2002, D.C. Law 14-190, § 1204, 49 DCR 6968.)

Prior Codifications. — 2001 Ed., § 1-328.04.

Legislative history of Law 14-190. — For Law 14-190, see notes following § 1-301.131.

Part C

OFFICE OF UNIFIED COMMUNICATIONS.

§ 1-327.51. **Definitions.**

For the purposes of this part, unless otherwise required by the context, the term:

(1) “Agencies” means the Metropolitan Police Department, the Fire and Emergency Medical Services Department, and the Customer Service Operations Unit.

(2) “Call center” means the telephone-based call center and associated operation involving any department or agency throughout the District government that operates the District’s 911, 311, and 727-1000 systems or other facilities for emergency and non-emergency calls. The term “call center” shall include the Citywide Call Center that is responsible for the receipt and processing of 727-1000 calls, but shall not include any other component of the Customer Service Operations Unit established by § 1-327.32.

(3) “Call center technology” means computer-aided dispatch systems and related public safety answering point technologies and telecommunications devices, and related equipment and appurtenances, including automatic call distribution equipment and any related equipment that manages, stores, channels or otherwise processes telephone calls, mobile communications devices, cellular communications, automatic vehicle location devices, global positioning technologies, and supporting metropolitan area network-based communications and supporting local area networks, that may be used in a call center.

(4) “Customer service” means activities involved in the receipt and processing of emergency, non-emergency, and citizen service requests by the agencies’ call centers.

(5) “Director” means the Director, Office of Unified Communications.

(6) “Office” means the Office of Unified Communications established by this part.

(7) “Radio technology” means public safety voice radio communications systems and other public safety wireless communications systems and resources.

(8) “Unified Communications Center” means the control center for radio and call center technology, and customer service, within the Office.

(Dec. 7, 2004, D.C. Law 15-205, § 3202, 51 DCR 8441.)

Legislative history of Law 15-205. — Law 15-205, the “Fiscal Year 2005 Budget Support Act of 2004”, was introduced in Council and assigned Bill No. 15-768, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 14, 2004, and June 29, 2004, respectively. Signed by the Mayor on August 2, 2004, it was assigned Act No. 15-487 and transmitted to

both Houses of Congress for its review. D.C. Law 15-205 became effective on December 7, 2004.

Short title. — Short title of subtitle B of title III of Law 15-205: Section 3201 of D.C. Law 15-205 provided that subtitle B of title III of the act may be cited as the Office of Unified Communications Establishment Act of 2004.

§ 1-327.52. Establishment of Office of Unified Communications.

(a) There is established, as a subordinate agency under the Mayor in the executive branch of the government of the District of Columbia, an Office of Unified Communications. The Office shall centralize the customer service functions and activities of the District government’s 911, 311, and 727-1000 systems, and other facilities for emergency, non-emergency, and citizen service calls, and be responsible for the operation and maintenance of the District government’s radio technology and call center technology.

(b) The Office shall be under the supervision of a Director, Office of Unified Communications, who shall carry out the functions and authorities assigned to the Office.

(Dec. 7, 2004, D.C. Law 15-205, § 3203, 51 DCR 8441.)

Legislative history of Law 15-205. — For Law 15-205, see notes following § 1-327.51.

Short title. — Short title: Section 3041 of D.C. Law 17-20 provided that subtitle E of title III of the act may be cited as the “Communications Reports Act of 2007”.

Editor’s notes. — Communications reports: Section 3042 of D.C. Law 17-20 provided:

“By October 1, 2008, the Office of the Attorney General, the Metropolitan Police Department, the Fire and Emergency Medical Services Department, the Department of Corrections, the Homeland Security and Emer-

gency Management Agency, the Office of Administrative Hearings, and the Office of Unified Communications shall each provide a report to the Council on its efforts to identify efficiencies and reduce telephone and communications costs, including:

“(1) Identification of the number of active phone lines within the agency and used by the agency;

“(2) Identification of the service provider and the rate for each active phone line; and

“(3) Strategies to implement cost-savings.”

§ 1-327.53. Transfers.

(a) All of the authority, responsibilities, duties, and functions of the agencies’ call centers and radio technology shall be transferred from the agencies to the Office of Unified Communications within such reasonable period of time as the Mayor may designate. The transfer shall include all 911, 311, and 727-1000 call center authority, responsibilities, duties, functions, and infrastructure.

(b) All vacant and filled positions, personnel, property, and unexpended balances of appropriations, allocations, and other funds available or to be made available to the agencies to perform the functions set forth in § 1-327.54 shall be transferred to the Office of Unified Communications within such reasonable period of time as the Mayor may designate.

(c) The Mayor, or the Mayor’s designee, may organize the personnel and property transferred to the Office from the agencies into such organizational

components as the Mayor or the Mayor's designee deems appropriate, and may develop any reports and evaluation systems necessary to assess the effectiveness of the reorganization plan authorized by this part.

(d) All authority and operations related to the Emergency and Non-Emergency Number Telephone Calling Systems Fund, established by § 34-1801, shall be transferred to the Office of Unified Communications.

(Dec. 7, 2004, D.C. Law 15-205, § 3204, 51 DCR 8441.)

Legislative history of Law 15-205. — For Law 15-205, see notes following § 1-327.51.

§ 1-327.54. Functions.

The Office shall:

(1) Provide centralized customer service for the District government's 911, 311, 727-1000 call systems, and other emergency, non-emergency, and citizen service calls;

(2) Provide centralized, District-wide coordination and management of the District government's radio technology and call center technology systems and resources;

(3) Develop and enforce policy directives and standards for the acquisition, operation, and maintenance of radio technology and call center technology systems and services for all District agencies and departments, coordinating such activities with appropriate semi-governmental and private entities, the Federal Communications Commission, federal and state radio communications coordination organizations, and jurisdictions adjacent to or otherwise affecting the application or use of radio technology and call center technology in the District;

(4) Develop and enforce policy directives and standards for the integration, maintenance, and use of information systems and data resources needed to support the functions of the Office;

(5) Develop and enforce policy directives and standards for management of the building facilities supporting radio technology and call center technology;

(6) Develop and enforce policy directives and standards regarding all radio communications towers, antennae, and related equipment and appurtenances used by District departments and agencies;

(7) In coordination with the Office of the Chief Technology Officer, review all agency proposals, purchase orders, and contracts for the acquisition of radio technology and call center technology systems, resources, and services, and recommend approval or disapproval to the Chief Procurement Officer;

(8) In coordination with the Office of the Chief Technology Officer, review and approve the radio technology and call center technology budgets for District government departments and agencies and recommend approval or disapproval to the Chief Financial Officer;

(9) Coordinate the development of information management plans, standards, systems, and procedures throughout the District government for radio

technology and call center technology, including the development of a radio technology and call center technology strategic plan for the District;

(10) Assess new or emerging radio technologies and call center technologies and advise District departments and agencies on the potential applications of these technologies to their programs and services;

(11) Implement radio technology and call center technology solutions and systems throughout the District government;

(12) Promote the compatibility of radio technology and call center technology throughout the District government; and

(13) Serve as a resource and provide advice to District departments and agencies about how to use radio technology and call center technology to improve services, including providing assistance to departments and agencies in developing radio technology and call center technology strategic plans.

(Dec. 7, 2004, D.C. Law 15-205, § 3205, 51 DCR 8441.)

Legislative history of Law 15-205. — For Law 15-205, see notes following § 1-327.51.

§ 1-327.55. Organization.

There are established 4 primary organizational functions in the Office as follows:

(1)(A) The Office of the Director, Office of Unified Communications shall include the staff and organizational units needed to develop plans and policies for, and oversee the execution of, the District's radio technology, call center technology, and customer service policies and operations, and to carry out the administrative functions of the Office of Unified Communications.

(B) The administrative functions of the Office of Unified Communications shall include human resources, training, legal services, budget and financial management, procurement, facilities management, and such other general and administrative functions as the Director deems necessary to support and assist the functions and purposes of the Office of Unified Communications. The Director may provide for the execution of administrative functions either by hiring full-time personnel or by entering into memoranda of understanding with other departments and agencies of the District that provide for the sharing of administrative personnel between the departments and agencies and the Office.

(C) The Office of the Director, Office of United Communications shall also include one or more positions designated as liaisons with the agencies to ensure that the functions of the Office effectively support and coordinate with the functions of the agencies.

(2) Call Center Operations shall carry out all of the customer service functions of the Office.

(3) Radio and Call Center Technology Support Services shall provide direct assistance and support to the agencies and other departments and agencies of the District regarding the implementation and operation of radio technology and call center technology. Radio and Call Center Technology Support Services shall also provide procurement and contract oversight and

assistance for radio technology and call center technology, maintain standard radio technology and call center technology contracts that all District departments and agencies may use, and manage radio technology and call center technology contracts and systems throughout the District government.

(4) Radio and Call Center Technology Technical Services shall provide support for public safety voice radio and public safety wireless base station and field devices, including voice communications, data communications, and associated network trunking equipment and appurtenances, and identify cost savings, operational efficiencies, and ways to improve radio technology and call center technology services.

(Dec. 7, 2004, D.C. Law 15-205, § 3206, 51 DCR 8441.)

Legislative history of Law 15-205. — For Law 15-205, see notes following § 1-327.51.

§ 1-327.56. Coordination with agencies.

The Office shall enter into memoranda of understanding with the agencies, as necessary, to define the Office's obligations to the agencies, and associated procedures and performance standards, with respect to custody and sharing of data generated in the operations of the Office, support for the agencies' dispatch operations and priorities, production of radio transmission transcripts, the provision of customer service to the hearing impaired, and such other matters as the Office and the agencies deem appropriate.

(Dec. 7, 2004, D.C. Law 15-205, § 3207, 51 DCR 8441.)

Legislative history of Law 15-205. — For Law 15-205, see notes following § 1-327.51.

§ 1-327.57. Rules.

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, may issue rules to implement the provisions of this part.

(Dec. 7, 2004, D.C. Law 15-205, § 3208, 51 DCR 8441.)

Legislative history of Law 15-205. — For Law 15-205, see notes following § 1-327.51.

Delegation of Authority. — Delegation of Authority pursuant to the Emergency and Non-Emergency Number Telephone Calling Sys-

tems Fund Act of 2000 and Section 3208 of the Office of Unified Communications Establishment Act of 2004, see Mayor's Order 2009-85, May 27, 2009 (56 DCR 6826).

Part D

D.C. ONE CARD.

§ 1-327.71. Definitions.

For the purposes of this part, the term:

- (1) "DC One Card" means a credential issued by the District government

as a single credential for purposes of accessing multiple District facilities, programs, and benefits, including public libraries, facilities of the Department of Parks and Recreation, and public schools.

(2) “Electronic chip” means a smart chip, radio frequency identification chip, or other contact or contact-less electronic media, including a Washington Metropolitan Area Transit Authority Smartrip chip, embedded in a DC One Card, to be read by participating agencies and programs for identification of the cardholder.

(Mar. 3, 2010, D.C. Law 18-111, § 1002, 57 DCR 181.)

Emergency legislation. — For temporary (90 day) addition, see § 1002 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) addition, see § 1002 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 18-111. — Law 18-111, the “Fiscal Year 2010 Budget Support Act of 2009”, was introduced in Council and

assigned Bill No. 18-203, which was referred to the Committee on the Whole. The bill was adopted on first and second readings on May 12, 2009, and September 22, 2009, respectively. Signed by the Mayor on December 18, 2009, it was assigned Act No. 18-255 and transmitted to both Houses of Congress for its review. D.C. Law 18-111 became effective on March 3, 2010.

Short title. — Short title: Section 1001 of D.C. Law 18-111 provided that subtitle A of title I of the act may be cited as the “Technology Services Support Act of 2009”.

§ 1-327.72. Replacement fee.

A nonrefundable fee of \$5 for replacement of any DC One Card that contains an electronic chip shall be collected by the agency issuing the replacement card at the point of issuance of the replacement card.

(Mar. 3, 2010, D.C. Law 18-111, § 1003, 57 DCR 181.)

Emergency legislation. — For temporary (90 day) addition, see § 1003 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) addition, see § 1003

of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 18-111. — For Law 18-111, see notes following § 1-327.71.

§ 1-327.73. Rules.

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], shall issue rules to implement the provisions of this part.

(Mar. 3, 2010, D.C. Law 18-111, § 1004, 57 DCR 181.)

Emergency legislation. — For temporary (90 day) addition, see § 1004 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) addition, see § 1004

of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 18-111. — For Law 18-111, see notes following § 1-327.71.

Subchapter XII-A. Grant Administration.

§ 1-328.01. Grant transparency.

To ensure a transparent process for issuing and managing grants, the Office of Partnerships and Grants Development shall establish uniform guidelines for the application for and reporting on any grants received from any entity of the government of the District. The guidelines shall include a description of the project scope, budget, program activities, timelines, performance, and any appropriate financial information.

(Sept. 18, 2007, D.C. Law 17-20, § 1014, 54 DCR 7052.)

Prior Codifications. — 2001 Ed., § 1-333.12.

Temporary Addition of Section. — Sections 2 to 4 of D.C. Law 18-155 added sections to read as follows:

“Sec. 2. Definitions.

“For the purposes of this act:

“(1) ‘Adulterated’ shall have the same meaning as provided in section 402 of the Federal Food, Drug, and Cosmetic Act, approved June 25, 1938 (52 Stat. 1046; 21 U.S.C. § 342) (‘Food, Drug, and Cosmetic Act’).

“(2) ‘Health care facility’ means a hospital, assisted living facility, or nursing home.

“(3) ‘Medical supply’ means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory that is:

“(A) Recognized in the official National Formulary or the United States Pharmacopeia, or any supplement to them;

“(B) Intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease or other conditions; or

“(C) Intended to affect the structure or any function of the body that does not achieve its primary intended purpose through chemical action within or on the body and is not dependent upon being metabolized for the achievement of its primary intended purpose.

“(4) ‘Misbranded’ shall have the same meaning as provided in section 402 of the Food, Drug, and Cosmetic Act (21 U.S.C. § 343).

“(5) ‘Pharmaceutical product’ means a drug or biologic for human use regulated by the federal Food and Drug Administration.

“(6) ‘Pharmacy’ means an establishment or institution where the practice of pharmacy is conducted and drugs or prescriptions are compounded or dispensed, offered for sale, given away, or displayed for sale.

“Sec. 3. Donations of unused pharmaceutical products and medical supplies.

“(a) The Mayor may designate a nonprofit organization to accept pharmaceutical products

and medical supplies from health care facilities and pharmacies for the relief of earthquake victims in Haiti.

“(b) Notwithstanding any other District law, a District pharmacy or health care facility may donate to the nonprofit organization designated by the Mayor a pharmaceutical product or medical supply, including those donated to the pharmacy or health care facility by a patient, or the patient’s relative following the death of the patient, provided that:

“(1) The pharmaceutical product:

“(A) Is in its original, sealed, and tamper-evident packaging; except, that a pharmaceutical product in a single-unit dose or blister pack with the outside packaging opened may be accepted provided that the single-unit dose packaging remains intact;

“(B) Bears an expiration date that is more than 3 months after the date the pharmaceutical product is donated;

“(C) Has been inspected by a pharmacist and the pharmacist has determined it is not adulterated or misbranded; and

“(D) Is not a controlled substance; and

“(2) The medical supply is inspected by a pharmacist and the pharmacist has determined that the medical supply is not adulterated or misbranded.

“(c) A health care facility or pharmacy that donates a pharmaceutical product or medical supply that receives notice that the pharmaceutical product or medical supply has been recalled shall notify the designated nonprofit organization of the recall.

“(d) If the designated nonprofit organization receives a recall notification from a health care facility or pharmacy, it shall ensure that the recalled pharmaceutical products and medical supplies within its control are destroyed and, if a recalled pharmaceutical product or medical supply has been sent to Haiti, attempt to ensure that the recalled pharmaceutical products and medical supplies sent to Haiti are destroyed

Sec. 4. Immunity from liability and exemption from disciplinary action. “A person, health

care facility, pharmacy, or the nonprofit organization designated by the Mayor acting reasonably, in good faith, and within the scope of this act, or any rules issued pursuant to this act, shall be immune from civil liability and criminal prosecution and exempt from disciplinary action for acts and omissions, including injury to or the death of an individual to whom a donated pharmaceutical product or medical supply is provided pursuant to this act.”

Section 6(b) of D.C. Law 18-155 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary

(90 day) addition, see § 1014 of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

For temporary (90 day) amendment of section, see §§ 2 to 4, of Haiti Earthquake Relief Drug and Medical Supply Assistance Emergency Act of 2009 (D.C. Act 18-318, February 22, 2010, 57 DCR 1658).

Legislative history of Law 17-20. — For Law 17-20, see notes following § 1-301.114.

Short title. — Short title: Section 1011 of D.C. Law 17-20 provided that subtitle B of title I of the act may be cited as the “Specified Funding Allocations Act of 2007”.

§ 1-328.02. Grants for planning and planning implementation purposes.

The Mayor may issue grants to individuals and organizations from local revenue, dedicated tax revenue, special purpose revenue, and capital funds in furtherance of the Mayor’s planning mission under § 1-204.23, subject to available appropriations, and subject to the provisions of § 47-368.06.

(Sept. 24, 2010, D.C. Law 18-223, § 2212, 57 DCR 6242.)

Prior Codifications. — 2001 Ed., § 1-301.78.

Temporary Addition of Section. — Section 402 of D.C. Law 18-222 added sections to read as follows:

“Sec. 402. Grants for planning and planning implementation purposes. “The Mayor may issue grants to individuals and organizations in furtherance of the Mayor’s planning mission under section 423 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 792; D.C. Official Code § 1-204.23), subject to appropriations and the provisions of D.C. Official Code § 47-368.06 from:

- “(1) Local revenue;
- “(2) Dedicated tax revenue;
- “(3) Special purpose revenue; and
- “(4) Capital funds.”

Section 2002(b) of D.C. Law 18-222 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition, see § 2212 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

For temporary (90 day) addition, see § 402 of Fiscal Year 2010 Balanced Budget Support Emergency Act of 2010 (D.C. Act 18-450, June 28, 2010, 57 DCR 5635).

For temporary (90 day) addition, see § 402 of Fiscal Year 2010 Balanced Budget Support Congressional Review Emergency Act of 2010 (D.C. Act 18-531, August 6, 2010, 57 DCR 8109).

Legislative history of Law 18-223. — For Law 18-223, see notes following § 1-301.78.

Short title. — Short title: Section 2211 of D.C. Law 18-223 provided that subtitle R of title II of the act may be cited as the “Planning Grant-making Authority Act of 2010”.

§ 1-328.03. Voting rights and statehood grants.

Notwithstanding any other law, the Office of the Secretary of the District of Columbia may issue competitive grants to promote voting rights and statehood in the District of Columbia.

(Sept. 14, 2011, D.C. Law 19-21, § 1072, 58 DCR 6226.)

Temporary Addition of Section. — Section 2 of D.C. Law 19-130 added a provision to read as follows:

“Sec. 2. Workforce job development grant-making authority.

“(a) The Director of the Department of Em-

ployment Services ('DOES') may issue grants to individuals and organizations from the funds made available to the DOES pursuant to local appropriations or the federal Workforce Investment Act of 1998, approved August 7, 1998 (112 Stat. 936; 29 U.S.C § 2822), for workforce development purposes, including increasing occupational skills, job retention, employment opportunities, and earnings of the District's workforce pursuant to:

"(1) Section 2 of the Youth Employment Act of 1979, effective January 5, 1980 (D.C. Law 3-46; D.C. Official Code § 32-241);

"(2) Section 2a of the Youth Employment Act of 1979, effective January 5, 1980 (D.C. Law 3-46; D.C. Official Code § 32-242);

"(3) Section 203 of the Way to Work Amendment Act of 2006, effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code § 32-752);

"(4) Sections 2102 and 2103 of the Transitional Employment Program and Apprenticeship Initiative Establishment Act of 2005, effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code §§ 32-1331 and 32-1332); and

"(5) Section 11 of the Workforce Investment Implementation Act of 2000, effective July 18, 2000 (D.C. Law 13-150; D.C. Official Code § 32-1610).

"(b) Notwithstanding the provisions of D.C. Official Code § 47-368.06, grants that may be issued pursuant to this section include grants that the Mayor, Director of the DOES, or an agency receives through an intra-District

transfer, a memorandum of understanding, or a reprogramming from an agency lacking grant-making authority.

"(c) The Director of the DOES may issue rules to implement the provisions of this act."

Section 4(b) of D.C. Law 19-130 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition of section, see § 2 of Workforce Job Development Grant-Making Authority Emergency Act of 2012 (D.C. Act 19-300, February 21, 2012, 59 DCR 1667).

For temporary (90 day) addition of section, see § 2 of Workforce Job Development Grant-Making Authority Congressional Review Emergency Act of 2012 (D.C. Act 19-377, May 30, 2012, 59 DCR 6609).

Legislative history of Law 19-21. — Law 19-21, the "Fiscal Year 2012 Budget Support Act of 2011", was introduced in Council and assigned Bill No. 19-203, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 25, 2011, and June 14, 2011, respectively. Signed by the Mayor on July 22, 2011, it was assigned Act No. 19-98 and transmitted to both Houses of Congress for its review. D.C. Law 19-21 became effective on September 14, 2011.

Short title. — Short title: Section 1071 of D.C. Law 19-21 provided that subtitle G of title I of the act may be cited as "Office of the Secretary Limited Grant-Making Authority Act of 2011".

Subchapter XIII. Acceptance of Gifts and Donations.

§ 1-329.01. Acceptance of gifts and donations.

(a)(1) An entity of the District of Columbia government may accept and use a gift or donation during fiscal year 2003 and any subsequent fiscal year if—

(A) the Mayor approves the acceptance and use of the gift or donation (except as provided in paragraph (2) of this subsection); and

(B) the entity uses the gift or donation to carry out its authorized functions or duties.

(2) The Council of the District of Columbia and the District of Columbia courts may accept and use gifts without prior approval by the Mayor.

(b) Each entity of the District of Columbia government shall keep accurate and detailed records of the acceptance and use of any gift or donation under subsection (a) of this section, and shall make such records available for audit and public inspection.

(c) For the purposes of this section, the term "entity of the District of Columbia government" includes an independent agency of the District of Columbia and the District of Columbia Public Libraries.

(d) This section shall not apply to the District of Columbia Board of Education, which may, pursuant to the laws and regulations of the District of

Columbia, accept and use gifts to the public schools without prior approval by the Mayor.

(e) This section shall not apply to the Board of Library Trustees, which may, pursuant to the laws and regulations of the District of Columbia, accept and use gifts to the District of Columbia Public Library without prior approval by the Mayor.

(Feb. 20, 2003, 117 Stat. 123, Pub. L. 108-7, Div. C, title III, § 115; Oct. 16, 2006, 120 Stat. 2029, Pub. L. 109-356, § 125; Mar. 14, 2007, D.C. Law 16-268, § 6, 54 DCR 833.)

Prior Codifications. — 1981 Ed., § 1-369.

Effect of amendments. — Pub. L. 109-356, in subsec. (c), inserted “and the District of Columbia Public Libraries”.

D.C. Law 16-268 added subsec. (e).

Emergency legislation. — For temporary (90 day) amendment of section, see § 4602 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 6, 2000, 47 DCR 8740).

Legislative history of Law 16-268. — Law 16-268, the “Public Charter School Assets and Facilities Preservation Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-624, which was referred to Committee on Education, Libraries and Recreation. The Bill was adopted on first and second readings on December 6, 2006, and December 19, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-624 and transmitted to both Houses of Congress for its review. D.C. Law 16-268 became effective on March 14, 2007.

Delegation of Authority. — Delegation of Authority Pursuant to D.C. Official Code § 1-204.22 (6) (2001) & 1-329.01 (2001) Concerning Gifts and Donations to Support the Citizen Summit II, see Mayor’s Order 2001-137, September 14, 2001 (48 DCR 9001).

Delegation of Authority to Accept Donations, see Mayor’s Order 2001-141, September 18, 2001 (48 DCR 9008).

Delegation of Duty to Administer Public Awareness Campaign for Protections from Predatory Lending and Mortgage Foreclosure Improvements Act of 2000, see Mayor’s Order 2001-159, October 12, 2001 (48 DCR 9891).

Resolutions. — Resolution 18-344, the “Secretary to the Council Authorization to Accept and Use Donations on Behalf of the Council Delegation Authorization Resolution of 2009”, was approved effective December 15, 2009.

Mayor’s Orders. — Establishment—Office of Partnership and Grant Services, see Mayor’s Order 2008-33, February 26, 2008 (55 DCR 5291).

Establishment—Office of Partnerships and Grants Services—Revised, see Mayor’s Order 2010-60, April 23, 2010 (57 DCR 3509).

Donations and Gifts to the District Government, see Mayor’s Order 2010-167, October 22, 2010 (57 DCR 10006).

Establishment—Office of Partnerships and Grant Services, see Mayor’s Order 2011-170, October 5, 2011 (58 DCR 8847).

Editor’s notes. — D.C. Law 13-172, § 4602, Oct. 19, 2000, 47 DCR 6308, provided similar language:

“(a) An entity of the District of Columbia government may accept and use a gift or donation during fiscal year 2001, or any subsequent fiscal year, if:

“(1) The Mayor approves the acceptance and use of the gift or donation; provided, that the Council of the District of Columbia may accept and use gifts without prior approval by the Mayor; and

“(2) The entity uses the gift or donation to carry out its authorized functions or duties.

“(b) Each entity of the District of Columbia government shall keep accurate and detailed records of the acceptance and use of any gift or donation under subsection (a) of this section, and shall make such records available for audit and public inspection.

“(c) For the purposes of this section, the term ‘entity of the District of Columbia government’ includes an independent agency of the District of Columbia.

“(d) This section shall not apply to the District of Columbia Board of Education, which may, pursuant to the laws and regulations of the District of Columbia, accept and use gifts to the public schools without prior approval by the Mayor.”

Subchapter XIV. Mayor's Official Residence.

Part A

OFFICIAL RESIDENCE COMMISSION.

§ 1-331.01. Findings.

The Council of the District of Columbia finds that:

(1) The District of Columbia is the nation's capital and an international showcase.

(2) The Mayor of the District of Columbia serves as the highest elected official at both the state and local levels.

(3) Each of the 50 states in the United States provides an official residence for its top executive government official, the governor, for the purpose of serving as: an official state residence; a suitable official location for entertaining and honoring state, national, and international guests, as well as its own distinguished citizens; and an official location that houses and displays cherished memorabilia of the state's cultural and social history.

(4) An official residence is also provided for the mayors of major cities in the United States, including Detroit, New York, and Los Angeles.

(5) The mayors of cities that serve as the capitals of other nations are also provided with an official residence, including London, England and Paris, France.

(6) The Mayor of the District of Columbia should have a residence suitable to entertain and honor citizens, businesses, local and federal officials, and the many official guests and distinguished persons who visit the District each year from other cities, states, and nations.

(7) After 25 years of limited home rule, it is time to establish an official residence of the Mayor of the District of Columbia.

(Oct. 21, 2000, D.C. Law 13-179, § 2, 47 DCR 6847.)

Prior Codifications. — 1981 Ed., § 1-370.1.

Legislative history of Law 13-179. — Law 13-179, the "Mayor's Official Residence Commission Establishment Act of 2000," was introduced in Council and assigned Bill No. 13-590, which was referred to the Committee of the

Whole. The Bill was adopted on first and second readings on June 26, 2000, and July 11, 2000, respectively. Signed by the Mayor on July 26, 2000, it was assigned Act No. 13-390 and transmitted to both Houses of Congress for its review. D.C. Law 13-179 became effective on October 21, 2000.

§ 1-331.02. Definitions.

For the purposes of this subchapter, the term:

(1) "Commission" means the Mayor's Official Residence Commission established pursuant to this subchapter.

(2) "Official residence" means the land and improvements where the Mayor has the exclusive right to live during the Mayor's term of office, and which shall be exempt from property taxes.

(3) "Substantial nongovernment in-kind contributions" means any service

reasonably valued at more than \$5,000 which is received from any source other than the District government.

(Oct. 21, 2000, D.C. Law 13-179, § 3, 47 DCR 6847.)

Prior Codifications. — 1981 Ed., § 1-370.2.

Legislative history of Law 13-179. — For Law 13-179, see notes following § 1-331.01.

§ 1-331.03. Mayor's Official Residence Commission — establishment; duties.

(a) There is established a Mayor's Official Residence Commission with the purpose of preparing recommendations to the Council and the Mayor on the most appropriate site in the District to establish the Mayor's official residence and on the most cost-effective methods of financing the acquisition, renovation, and maintenance of the official residence.

(b) The Commission shall:

(1) Explore the appropriateness and cost of using property under the District's jurisdiction that is located at 921 Pennsylvania Avenue, S.E. (Square 0948, Lots 802 and 803), for use as the official residence upon the expiration of the current lease of this property in June 2002;

(2) Compare the appropriateness and cost of using the property identified in paragraph (1) of this subsection as the official residence with the appropriateness and cost of using other properties already owned or to be acquired by the District or another entity for this purpose; and

(Square 0948, Lots 802 and 803), for use as the official residence upon the expiration of the current lease of this property in June 2002;

(3) Develop a plan for raising the funds necessary for the acquisition, renovation, and maintenance of the most appropriate property for use as the official residence.

(c)(1) The Commission shall submit its recommendations in the form of a report to the Council and the Mayor within 180 days of the appointment of a majority of its members. The report shall include the information, comparative analysis, and plan required by subsections (a) and (b) of this section, along with specific recommendations on the actions and timetables for such actions that are necessary to establish an official residence of the Mayor. The report shall be accompanied by any draft executive orders, or proposed legislation, regulations, or amendments to existing statutes or regulations, including this subchapter, which may be necessary to implement the recommendations.

(2) Prior to the issuance of this report, the Commission shall conduct not less than one public forum or hearing, at which comments are invited from the public, and for which 15 days prior notice is provided in the District of Columbia Register and to the Mayor, the Council, and each Advisory Neighborhood Commission. A copy of all written comments provided to the Commission by the public shall be submitted by the Commission to the Council and the Mayor.

(Oct. 21, 2000, D.C. Law 13-179, § 4, 47 DCR 6847.)

Prior Codifications. — 1981 Ed., §-1-370.3.

Legislative history of Law 13-179. — For Law 13-179, see notes following § 1-331.01.

§ 1-331.04. Mayor's Official Residence Commission — composition; compensation; quorum.

(a) The Commission shall be composed of 9 voting members. Four public citizen members including the chairperson of the Commission shall be appointed by the Chairman of the Council, 3 public citizen members shall be appointed by the Mayor, and 2 ex officio members shall be the District's Chief Property Management Officer and Director of the Office of Planning who each may designate from time to time a staff representative to perform the ex officio member's responsibilities. A majority of the members shall be required to be District residents. All appointments shall be made within 15 days of the October 21, 2000. A vacancy shall be filled in the same manner in which its initial appointment was made.

(b) Each public citizen member of the Commission shall serve without compensation and shall not be entitled to reimbursement for actual and necessary expenses incurred in the performance of the Commission's duties.

(c) The chairperson of the Commission, or the chairperson's designated representative who shall be a member of the Commission, shall convene all meetings of the Commission. The chairperson shall convene the first meeting of the Commission not later than 15 days after all appointments have been made. The Commission shall meet not less often than once a month.

(d) A majority of the members of the Commission shall constitute a quorum. Voting by proxy shall not be permitted, but meetings and votes by teleconference or other electronic means shall be permitted. A written summary shall be prepared of all meetings at which a vote is taken, which shall be made available to the public upon request.

(e) The Commission may request from any department, agency, or instrumentality of the District government, including independent agencies and receiverships, any information necessary to carry out the provisions of this subchapter. Each department, agency, instrumentality, independent agency, or receivership shall cooperate with the Commission and provide any information, in a timely manner, that the Commission requests to carry out the provisions of this subchapter.

(f) The Mayor shall provide administrative and technical support, office space, staff, supplies, and other resources needed by the Commission to carry out the provisions of this subchapter.

(g) The Commission may solicit, receive, accept, and expend contributions or grants from private or federal sources to carry out the provisions of this subchapter. Any Commission solicitation, receipt, acceptance, or expenditure of contributions or grants from private sources shall not be subject to appropriation. The Commission shall keep a record, available to the public for inspection, of all private contributions or grants and any substantial nongovernment in-kind contributions received. The record shall include the full name, address, and occupation or type of business of each donor.

(h) The Commission may enter into contracts, for which sufficient appropriations or other public or private funding is available and provided, with federal

or state agencies, private firms, institutions, or individuals to conduct research or surveys, prepare appraisals or reports, or perform other activities necessary to the discharge of its duties.

(i) The Commission may establish such advisory groups, committees, or subcommittees, consisting of members or nonmembers, as it deems necessary to carry out the purposes of this subchapter.

(j) No District laws, rules, or orders governing administrative procedures, conflict of interest, financial disclosure, employment, or procurement shall apply to the Commission in its expenditure of non-local funds, except as provided in this subchapter.

(Oct. 21, 2000, D.C. Law 13-179, § 5, 47 DCR 6847.)

Prior Codifications. — 1981 Ed., § 1-370.4.

Legislative history of Law 13-179. — For Law 13-179, see notes following § 1-331.01.

§ 1-331.05. Selection of official residence.

Within 60 days of the submission of the Commission's report to the Council and the Mayor, the Mayor shall propose the selection of a property to be used as the official residence and submit the proposed selection to the Council with a proposed resolution of approval. The proposed resolution shall specify, if applicable, the proposed methods of acquiring, renovating, and maintaining the property as the official residence. The Council or a committee of the Council shall hold a public hearing on the proposed resolution. If the Council does not approve or disapprove the proposed resolution within 90 calendar days, excluding days of Council recess, the proposed resolution shall be deemed disapproved.

(Oct. 21, 2000, D.C. Law 13-179, § 6, 47 DCR 6847.)

Prior Codifications. — 1981 Ed., § 1-370.5.

Legislative history of Law 13-179. — For Law 13-179, see notes following § 1-331.01.

Resolutions. — Resolution 14-113, the "Ap-

proval of the Proposal from the Eugene B. Casey Foundation for an Official Residence of the Mayor Resolution of 2001", was approved effective June 5, 2001.

Part B

DESIGNATION OF MAYOR'S OFFICIAL RESIDENCE.

§ 1-331.10. Designation of Casey Mansion as Mayor's Official Residence.

(a) On June 5, 2001, the Council of the District of Columbia adopted the Mayor's May 3, 2001 recommendation (PR 14-179) to accept and approve the proposal of the Eugene B. Casey Foundation, as set forth in a February 26, 2001 letter to the Mayor from Mrs. Eugene B. Casey, to designate the site at 1801 Foxhall Road, N.W., as the official residence of the Mayor of the District of Columbia ("Casey Mansion Proposal"). The Casey Mansion Proposal pro-

vides that the Casey Mansion Foundation, which has already acquired the property at 1801 Foxhall Road, N.W., would be endowed with sufficient private resources to build and maintain, in perpetuity, all operating costs for the buildings and grounds of the official Mayor's residence, including furnishings, housekeeping, insurance, landscaping, maintenance, security, staffing, and utilities.

(b) Prior to the issuance of any building permit for an official Mayor's residence at 1801 Foxhall Road, N.W., the Mayor shall require that the Casey Mansion Proposal is memorialized in a document signed by representatives of the Mayor and the Eugene B. Casey Foundation or other foundation established to own, build, or maintain the Casey Mansion, which is provided to the Council and made available to the public, and which sets forth the specific terms and any conditions of the Casey Mansion Proposal, including the rights and obligations of each party, and including but not limited to information on:

(1) The amount of funds and other assets set aside for the Casey Mansion Proposal;

(2) The bylaws and members of the board of directors of the Eugene B. Casey Foundation and of any other entity or foundation that will own, build, and maintain the Casey Mansion;

(3) The amount of funds donated by the Eugene B. Casey Foundation for trees in the District, and confirmation that the amount for trees is a separate gift not tied to the District's acceptance of the Casey Mansion Proposal;

(4) Whether the amount of funds set aside for the Casey Mansion Proposal includes funds to cover annual property tax revenue that is foregone due to ownership of the 1801 Foxhall Road, N.W., property by a nonprofit organization;

(5) Annual public financial disclosure reporting requirements associated with expenditures and sources of funds for operations of the Casey Mansion;

(6) How open and accessible the Casey Mansion buildings and grounds will be to the public; and

(7) Ensuring that the construction and operation of the Casey Mansion complies with all applicable local laws and regulations.

(Oct. 26, 2001, D.C. Law 14-42, § 21(b), 48 DCR 7612.)

Emergency legislation. — For temporary (90 day) addition of section, see § 21 of Technical Amendments Emergency Act of 2001 (D.C. Act 14-108, August 3, 2001, 48 DCR 7622).

Legislative history of Law 14-42. — For Law 14-42, see notes following § 1-307.67.

Subchapter XV. Miscellaneous.

§ 1-333.01. Pleuropneumonia.

Whenever any contagious, infectious, or communicable disease affecting domestic animals or live poultry, and especially the disease known as pleuropneumonia, shall be brought into or shall break out in the District of Columbia, it shall be the duty of the Council of said District to take measures to suppress the same promptly and to prevent the same from spreading; and for this

purpose the said Council is empowered to order and require that any premises, farm, or farms where such disease exists, or has existed, be put in quarantine; to order all or any animals coming into the District to be detained at any place or places for the purpose of inspection and examination; to prescribe regulations for and to require the destruction of animals or live poultry affected with contagious, infectious, or communicable disease, and for the proper disposition of their hides and carcasses; to prescribe regulations for disinfection, and such other regulations as they may deem necessary to prevent infection or contagion being communicated, and shall report to the Secretary of Agriculture whatever it may do in pursuance of the provisions of this section.

(May 29, 1884, 23 Stat. 33, ch. 60, § 8; Feb. 7, 1928, 45 Stat. 59, ch. 30.)

Prior Codifications. — 1981 Ed., § 1-324.
1973 Ed., § 1-230a.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(430) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commis-

sioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 1-333.02. Inspector of Asphalts and Cements; limitation upon compensation and services.

The Inspector of Asphalts and Cements shall not receive or accept compensation of any kind from or perform any work or render any services of a character required of him officially by the District of Columbia to any person, firm, corporation, or municipality other than the District of Columbia.

(Sept. 1, 1916, 39 Stat. 679, ch. 433.)

Prior Codifications. — 1981 Ed., § 1-341. 1973 Ed., § 1-307.

§ 1-333.03. Director of the Department of General Services. [Repealed].

Repealed.

(July 1, 1882, 22 Stat. 139, ch. 263, § 1; Apr. 27, 1904, 33 Stat. 363, ch. 1628; Mar. 2, 1911, 36 Stat. 966, ch. 192; June 26, 1912, 37 Stat. 140, ch. 182; April 12, 1997, D.C. Law 11-259, § 401, 44 DCR 1423.)

Prior Codifications. — 1981 Ed., § 1-364.
1973 Ed., § 1-304.
Legislative history of Law 11-259. — For

legislative history of D.C. Law 11-259, see Historical and Statutory Notes following § 1-301.91.

§ 1-333.04. Agents of the Director of the Department of General Services. [Repealed].

Repealed.

(May 26, 1908, 35 Stat. 274, ch. 198; April 12, 1997, D.C. Law 11-259, § 401, 44 DCR 1423.)

Prior Codifications. — 1981 Ed., § 1-365. 1973 Ed., § 1-305.

legislative history of D.C. Law 11-259, see Historical and Statutory Notes following § 1-301.91.

Legislative history of Law 11-259. — For

§ 1-333.05. Duties of Municipal Architect. [Repealed].

Repealed.

(Mar. 3, 1909, 35 Stat. 692, ch. 250; June 26, 1912, 37 Stat. 144, ch. 182; April 12, 1997, D.C. Law 11-259, § 401, 44 DCR 1423.)

Prior Codifications. — 1981 Ed., § 1-366. 1973 Ed., § 1-306.

Legislative history of Law 11-259. — For legislative history of D.C. Law 11-259, see Historical and Statutory Notes following § 1-301.91.

Editor's notes. — Office of Municipal Architect abolished: The Office of the Municipal Architect was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 42 of the Board of Commissioners, dated June 23, 1953 established under the direction and control of the Engineer Commissioner, a Department of Buildings and Grounds headed by a Director. The purpose of the new Department was to provide for the construction, repair and improvement of the physical plant of the District of Columbia. The Order set out the functions of the new Department and its organization. The Order abolished the former Department of Construction, the Office of the Municipal Architect, the Office of the Su-

perintendent of District Buildings, the Division of Repairs and Improvements of the District of Columbia Repair Shop, and the Construction Division, and provided that all of their functions and positions be transferred to the Department of Buildings and Grounds. This Order was issued pursuant to Reorganization Plan No. 5 of 1952. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions vested in the Department of Buildings and Grounds by Reorganization Order No. 42 were transferred to the Director of the Department of General Services by Commissioner's Order No. 69-96, dated March 7, 1969. The functions of the Department of General Services were transferred to the Department of Administrative Services by Reorganization Plan No. 5 of 1983, effective March 1, 1984, except the functions of the Department of General Services which were transferred to the Department of Public Works pursuant to Reorganization Plan No. 4 of 1983.

§ 1-333.06. Appropriations for printing schedules or lists of supplies and materials.

No part of any appropriation for the District of Columbia, except for public schools, shall be expended for printing or binding a schedule or list of supplies and materials for the furnishing of which contracts have been or may be awarded.

(June 28, 1944, 58 Stat. 533, ch. 300, § 13.)

Prior Codifications. — 1981 Ed., § 1-335.

1973 Ed., § 1-242.

§ 1-333.07. Authority to grant additional compensation.

Authority is hereby granted to the Secretary of the Interior and the President of the United States, in their discretion, to grant additional compensation at rates not to exceed those prevailing without regard to the provisions of §§ 1341, 1342 and 1349 to 1351 and subchapter II of Chapter 15 of Title 31, United States Code, additional compensation at rates not to exceed those prevailing in the District of Columbia for similar or comparable employment to each employee in or under the National Capital Parks and the Executive Mansion Grounds, whose compensation is fixed and adjusted from time to time by a wage board, or whose compensation is fixed without reference to Chapter 51 and subchapter III of Chapter 53 of Title 5, United States Code relating to the classification of government employees and related matters, or whose compensation is limited or fixed specifically by the provisions of the District of Columbia Appropriation Act, 1952.

(Oct. 25, 1951, 65 Stat. 637, ch. 560, § 2; Mar. 3, 1979, D.C. Law 2-139, § 3205(aaa), 25 DCR 5740.)

Cross references. — Merit system, effective date provisions, see § 1-636.02.

Prior Codifications. — 1981 Ed., § 1-345.
1973 Ed., § 1-251.

Legislative history of Law 2-139. — Law 2-139 was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978 and October 31, 1978, respectively. Signed by the Mayor on November 22,

1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

References in text. — “§§ 1341, 1342, and 1349 to 1351 and subchapter II of Chapter 15 of Title 31, United States Code”, referred to in this section, was substituted for “§ 3679 of the Revised Statutes, as amended (31 U.S.C. § 665)” on authority of § 4(b) of the Act of September 13, 1982, Pub. L. 97-258.

§ 1-333.08. Authority for transporting children of certain employees in District-owned vehicles.

The Mayor of the District of Columbia is authorized to utilize District-owned vehicles for transportation of children of employees of the District of Columbia government residing at Children’s Center between Children’s Center and Laurel, Maryland.

(Aug. 18, 1958, 72 Stat. 618, Pub. L. 85-670, § 1.)

Prior Codifications. — 1981 Ed., § 1-354.
1973 Ed., § 1-261.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 1-333.09. Reception of eminent persons; appropriation authorized.

(a) There is authorized to be appropriated an amount not to exceed \$100,000 in any fiscal year for expenses as the Mayor of the District of Columbia shall deem to be necessary, including personal services, for the reception and entertainment (including ceremonial gifts) of officials of foreign, state, local, or federal governments and other dignitaries and eminent persons visiting in or returning to the District of Columbia, or for the reception or entertainment of officials of foreign, state, local, or federal governments when the Mayor is visiting any other jurisdiction in his or her official capacity.

(b) There is authorized to be appropriated an amount not to exceed \$100,000 in any fiscal year for expenses as the Council of the District of Columbia shall deem to be necessary, including personal services, for the reception and entertainment (including ceremonial gifts) of officials of foreign, state, local, or federal governments and other dignitaries and eminent persons visiting in or returning to the District of Columbia, or for the reception or entertainment of officials of foreign, state, local, or federal governments when any Councilmember is visiting any other jurisdiction in his or her official capacity.

(b-1) The Mayor and Council may accept, administer, and use gifts or donations for the purpose of aiding, facilitating, and promoting the conduct of ceremonies in the District, including personal services, for the reception and entertainment, including ceremonial gifts, of officials of foreign, state, local, or federal governments and other dignitaries and eminent persons visiting or returning to the District, or for the reception or entertainment of officials of foreign, state, local, or federal governments when the Mayor is visiting any other jurisdiction in his or her official capacity.

(c) For purposes of this section, the term “dignitary” or “eminent person” means a person other than a government official, who is of high rank or attainment in his or her occupation or who has performed extraordinary service to, or has significantly contributed to the welfare of, the citizens of the District of Columbia.

(d) Any amounts appropriated for expenses under this section shall be subject to audit and accounted for in the same manner as any other District of Columbia government funds used for governmental purposes.

(e) The Secretary of the District of Columbia and the Secretary to the Council of the District of Columbia shall issue annual reports, which shall be made available to the public and which shall include an itemization of each disbursement under this section by the Mayor of the District of Columbia and by the Council of the District of Columbia, respectively. Records of disbursements under this section shall be retained for not less than 5 years.

(July 11, 1947, 61 Stat. 314, ch. 231, § 1; Mar. 3, 1979, D.C. Law 2-139, § 3205(b), 25 DCR 5740; Dec. 16, 1987, D.C. Law 7-58, § 2, 34 DCR 7083; Feb. 20, 1988, D.C. Law 7-80, § 2, 34 DCR 7960; Mar. 17, 2005, D.C. Law 15-258, § 2, 52 DCR 1176.)

Cross references. — Merit system, effective date provisions, see § 1-636.02.

Prior Codifications. — 1981 Ed., § 1-355. 1973 Ed., § 1-262.

Effect of amendments. — D.C. Law 15-258, in subsecs. (a) and (b), substituted “100,000” for “25,000”; and added subsec. (b-1).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-333.07.

Legislative history of Law 7-58. — Law 7-58 was introduced in Council and assigned Bill No. 7-307. The Bill was adopted on first and second readings on September 29, 1987 and October 13, 1987, respectively. Signed by the Mayor on October 26, 1987, it was assigned Act No. 7-91 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-80. — Law

7-80 was introduced in Council and assigned Bill No. 7-301, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1987 and November 24, 1987, respectively. Signed by the Mayor on December 1, 1987, it was assigned Act No. 7-115 and transmitted to both Houses of Congress for its review.

Legislative history of Law 15-258. — Law 15-258, the “Ceremonial Funds Amendment Act of 2004”, was introduced in Council and assigned Bill No 15-718, which was referred to Committee of Government Operations. The Bill was adopted on first and second readings on October 5, 2004, and November 9, 2004, respectively. Signed by the Mayor on November 30, 2004, it was assigned Act No. 15-633 and transmitted to both Houses of Congress for its review. D.C. Law 15-258 became effective on March 17, 2005.

CASE NOTES

Disclosure of expenditures.

Documents relating to mayor’s expenses from discretionary and ceremonial funds requested by newspaper pursuant to local Freedom of Information Act were not specifically exempted from disclosure by statute authorizing expenditure of discretionary and ceremonial

funds, and hence were not within Freedom of Information Act exemption providing for exemption from disclosure if information is exempted by other statutes. D.C. Code 1981, §§ 1-355, 1-356, 1-1524(a)(6). *Barry v. Washington Post Co.*, 529 A.2d 319, 1987 D.C. App. LEXIS 413 (1987).

§ 1-333.10. Expenditures.

(a) The Mayor of the District of Columbia, the Chairman and members of the Council of the District of Columbia, the Chief Judge of the District of Columbia Court of Appeals, the Chief Judge of the Superior Court of the District of Columbia, the Executive Officer of the District of Columbia Court System, the Superintendent of Schools, the City Administrator, the Director of the District of Columbia Public Library, and the Chief Executive Officer of the University of the District of Columbia are authorized to provide for the expenditure, within the limits of specified annual appropriation, of funds for appropriate purposes related to their official capacity as they may respectively deem necessary. Their determination thereof shall be final and conclusive, and their certificate shall be sufficient voucher for the expenditure of appropriations made pursuant to this section.

(b) At the end of each fiscal year, each official authorized to expend appropriations under this section shall provide an itemized accounting of these appropriations, which shall include the purposes for which all expenditures are made, in the form of an annual report, for presentation to the Mayor and the Council, and which shall be made available for public inspection.

(Oct. 26, 1973, 87 Stat. 509, Pub. L. 93-140, § 26; Sept. 23, 1978, D.C. Law 2-111, § 2, 25 DCR 1462; Oct. 24, 1981, D.C. Law 4-46, § 2, 28 DCR 4271; Jan. 26, 1982, D.C. Law 4-61, § 7, 28 DCR 4771; Feb. 20, 1988, D.C. Law 7-80, § 3, 34 DCR 7960.)

Prior Codifications. — 1981 Ed., § 1-356. 1973 Ed., § 1-262a.

Legislative history of Law 2-111. — Law 2-111 was introduced in Council and assigned Bill No. 2-334, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 13, 1978 and June 27, 1978, respectively. Signed by the Mayor on July 17, 1978, it was assigned Act No. 2-232 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-46. — Law 4-46 was introduced in Council and assigned Bill No. 4-202, which was referred to the Committee on Human Services. The Bill was adopted on first, first amended and second readings on June 16, 1981, June 30, 1981 and July

14, 1981, respectively. Signed by the Mayor on August 6, 1981, it was assigned Act No. 4-81 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-61. — Law 4-61 was introduced in Council and assigned Bill No. 4-264, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on September 15, 1981 and September 29, 1981, respectively. Signed by the Mayor on October 30, 1981, it was assigned Act No. 4-107 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-80. — For legislative history of D.C. Law 7-80, see Historical and Statutory Notes following § 1-333.09.

CASE NOTES

Disclosure.

Documents relating to mayor's expenses from discretionary and ceremonial funds requested by newspaper pursuant to local Freedom of Information Act were not specifically exempted from disclosure by statute authorizing expenditure of discretionary and ceremonial funds, and hence were not within Freedom of Information Act exemption providing for exemption from disclosure if information is exempted by other statutes. D.C. Code 1981, §§ 1-355, 1-356, 1-1524(a)(6). *Barry v. Washington Post Co.*, 529 A.2d 319, 1987 D.C. App. LEXIS 413 (1987).

nial funds, and hence were not within Freedom of Information Act exemption providing for exemption from disclosure if information is exempted by other statutes. D.C. Code 1981, §§ 1-355, 1-356, 1-1524(a)(6). *Barry v. Washington Post Co.*, 529 A.2d 319, 1987 D.C. App. LEXIS 413 (1987).

§ 1-333.11. Imposition of fee for delivery of bad check in payment of obligation due District of Columbia; amount of fee; manner of collection; exception.

(a) The Mayor of the District of Columbia shall prescribe and impose, in addition to any other penalties provided by law, a fee to be paid by each person who gives or causes to be given, in payment of any tax, assessment, fee, charge, or other obligation due the government of the District of Columbia, a check which is subsequently dishonored or not duly paid. The amount of the fee shall be prescribed from time to time by the Mayor and shall be based on the approximate cost to the District of Columbia of handling dishonored or unpaid checks and collecting the amounts they represent. The fee shall be collected in the same manner as the original obligation. Any receipt previously given in reliance upon such check shall be void, and no other receipt shall be given for the payment of the original amount due until the fee has also been paid. This section shall not apply to a check which is not paid because of the death of its drawer. The Mayor may issue rules and regulations necessary to carry out this section.

(b) Until such fee is prescribed by the Mayor pursuant to subsection (a) of this section, a fee in the amount of \$15 shall be imposed by the Mayor upon each person who gives or causes to be given, in payment of any tax, assessment, fee, charge, or other obligation due the government of the District of Columbia, a check which is subsequently dishonored or not duly paid.

(c) In addition to any other penalties prescribed by law, the Mayor may contract for the collection of the amount represented by any dishonored or

unpaid check that is given, or caused to be given, to the Mayor in payment of any liability or obligation owed to the District of Columbia government.

(d) In addition to the dishonored check fee provided for in subsection (b) of this section when collection of a dishonored or unpaid check is made pursuant to a contract authorized by subsection (c) of this section, the Mayor shall collect any costs or expenses incurred to recover and collect the amount represented by a dishonored or unpaid check from any such person who gives, or causes to be given, in payment of any obligation or liability due the District of Columbia government a check which is subsequently dishonored or not duly paid. In cases where collection is made by action at law or suit in equity, such costs and expenses shall include litigation expenses and attorneys fees.

(e) The Corporation Counsel is authorized to institute actions at law or in equity for the recovery of all amounts owed to the District as set forth in subsection (d) of this section, including the Corporation Counsel's own litigation expenses and attorneys fees. In the event the Corporation Counsel elects not to exercise his or her authority under this subsection, any person who, or entity that, renders the collection services provided for in subsection (c) of this section shall have the authority to institute actions at law or suits in equity for the recovery of the amounts represented by any dishonored or unpaid check, in addition to any amounts charged by the collector for collecting a dishonored or unpaid check and any litigation expenses and attorneys fees incurred by the collector for such collection.

(f) Notwithstanding the Mayor entering into a collection contract pursuant to subsection (c) of this section, the Mayor retains exclusive authority with respect to all District obligations and liabilities, including, but not limited to, the authority to resolve a dispute, comprise a claim, end collection activity, or establish a schedule of fees and expenses.

(g) There is hereby established within the General Fund of the District of Columbia a segregated, lapsing fund to be known as the Dishonored Check Fee Collection Fund ("Fund"). Any monies deposited in the Fund shall be used exclusively for the purposes set forth in this section. Any unexpended funds in the Fund at the end of a fiscal year shall revert to the unrestricted fund balance of the General Fund of the District of Columbia.

(Sept. 28, 1965, 79 Stat. 844, Pub. L. 89-208, § 1; July 18, 1981, D.C. Law 4-16, § 2, 28 DCR 2365; Nov. 19, 1997, 111 Stat. 2186, Pub. L. 105-100, § 157(b); Mar. 20, 1998, D.C. Law 12-60, § 1501, 44 DCR 7378; Oct. 20, 2005, D.C. Law 16-33, § 1102, 52 DCR 7503; Sept. 14, 2011, D.C. Law 19-21, § 9009, 58 DCR 6226.)

Cross references. — Unemployment compensation, administrative expenses payments, see § 51-114.

Prior Codifications. — 1981 Ed., § 1-357. 1973 Ed., § 1-264.

Effect of amendments. — D.C. Law 16-33, added subsec. (g).

D.C. Law 19-21, in subsec. (g), substituted "lapsing fund to be known as the Dishonored Check Fee Collection Fund ('Fund'). Any mon-

ies deposited in the Fund shall be used exclusively for the purposes set forth in this section. Any unexpended funds in the Fund at the end of a fiscal year shall revert to the unrestricted fund balance of the General Fund of the District of Columbia" for "nonlapsing fund to be known as the Dishonored Check Fee Collection Fund ('Fund'); provided, that any funds deposited in the Fund in the year prior to a current year and the interest earned on that money

remaining in the Fund after the payment of the costs accrued in the prior year, less 10% of the remainder amount that shall be retained as a reserve operating balance, shall be transferred or revert to the General Fund of the District of Columbia. All funds obtained from the fees authorized by this section, shall be deposited into the Fund and shall be used, subject to authorization by Congress in an appropriations act, to pay the costs of operating and maintaining the office or offices responsible for processing the fees authorized by this section."

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 1501 of Fiscal Year 1998 Revised Budget Support Temporary Act of 1997 (D.C. Law 12-59, March 20, 1998, law notification 45 DCR 2094).

Emergency legislation. — For temporary amendment of section, see § 1501 of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and see § 1501 of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

For temporary (90 day) amendment of section, see § 1102 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) repeal of section, see § 1054(a) of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) repeal of section, see § 1054(a) of Fiscal Year 2013 Budget Support

Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 4-16. — Law 4-16 was introduced in Council and assigned Bill No. 4-126, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on April 7, 1981 and May 5, 1981, respectively. Signed by the Mayor on May 21, 1981, it was assigned Act No. 4-31 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-60. — Law 12-60, the "Fiscal Year 1998 Revised Budget Support Act of 1998," was introduced in Council and assigned Bill No. 12-353, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on September 8, 1997, and October 7, 1997, respectively. Signed by the Mayor on October 24, 1997, it was assigned Act No. 12-191 and transmitted to both Houses of Congress for its review. D.C. Law 12-60 became effective on March 20, 1998.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 1-617.17.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 1-301.01.

Short title. — Short title of subtitle Q of title I of Law 16-33: Section 1101 of D.C. Law 16-33 provided that subtitle Q of title I of the act may be cited as the Dishonored Check Fee Collection Fund Establishment Act of 2005.

Editor's notes. — Application of Law 12-60: Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

§ 1-333.12. Grant transparency. [Transferred].

Recodified as § 1-328.01.

Subchapter XVI. Divestment, Prohibition on Investment of Certain Public Funds.

Part A SUDAN.

§ 1-335.01. Definitions.

For the purposes of this part, the term:

(1) "Active Business Operations" means all Business Operations that are not Inactive Business Operations.

(2) "Business Operations" means engaging in commerce in any form in Sudan, including by acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products,

services, personal property, real property, or any other apparatus of business or commerce.

(3) “Company” means any sole proprietorship, for-profit or nonprofit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly-owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such entities or business associations, that exists for for-profit or nonprofit purposes.

(4) “Complicit” means taking actions during any preceding 20-month period which have directly supported or promoted the genocidal campaign in Darfur, including preventing Darfur’s victimized population from communicating with each other, encouraging Sudanese citizens to speak out against an internationally approved security force for Darfur, or actively working to deny, cover up, or alter the record on human rights abuses in Darfur.

(5) “Direct Holdings” in a company means all securities of that company held directly by the Public Fund or in an account or fund in which the Public Fund owns all shares or interests.

(6) “Government of Sudan” means the government in Khartoum, Sudan, which is led by the National Congress Party (formerly known as the National Islamic Front) or any successor government formed on or after October 13, 2006 (including the coalition National Unity Government agreed upon in the Comprehensive Peace Agreement for Sudan. The term “Government of Sudan” shall not include the regional government of southern Sudan.

(7) “Inactive Business Operations” means the mere continued holding or renewal of rights to property previously operated for the purpose of generating revenues but not presently deployed for such purpose.

(8) “Indirect Holdings” in a company means all securities of that company held in an account or fund, such as a mutual fund, managed by one or more persons not employed by the Public Fund, in which the Public Fund owns shares or interests together with other investors not subject to the provisions of this part.

(9) “Marginalized Populations Of Sudan” include the portion of the population in the Darfur region that has been genocidally victimized; the portion of the population of southern Sudan victimized by Sudan’s North-South civil war; the Beja, Rashidiya, and other similarly underserved groups of eastern Sudan; the Nubian and other similarly underserved groups in Sudan’s Abyei, Southern Blue Nile, and Nuba Mountain regions; and the Amri, Hamadab, Manasir, and other similarly underserved groups of northern Sudan.

(10) “Military Equipment” means:

(A) Weapons, arms, military supplies, and equipment that readily may be used for military purposes, including radar systems or military-grade transport vehicles; or

(B) Supplies or services sold or provided directly or indirectly to any force actively participating in armed conflict in Sudan.

(11) “Mineral Extraction Activities” include exploring, extracting, processing, transporting, or wholesale selling or trading of elemental minerals or

associated metal alloys or oxides, (ore), including gold, copper, chromium, chromite, diamonds, iron, iron ore, silver, tungsten, uranium, and zinc, and facilitating such activities, including by providing supplies or services in support of such activities.

(12)(A) "Oil-Related Activities" include:

- (i) Owning rights to oil blocks;
- (ii) Exporting, extracting, producing, refining, processing, exploring for, transporting, selling, or trading of oil;
- (iii) Constructing, maintaining, or operating a pipeline, refinery, or other oil-field infrastructure; and
- (iv) Facilitating such activities, including by providing supplies or services in support of such activities.

(B) The mere retail sale of gasoline and related consumer products shall not be considered Oil-Related Activities.

(13) "Power Production Activities" means any Business Operations that involve a project commissioned by the National Electricity Corporation of Sudan or other similar Government of Sudan entity whose purpose is to facilitate power generation and delivery, including establishing power-generating plants or hydroelectric dams, selling or installing components for the project, providing service contracts related to the installation or maintenance of the project, and facilitating such activities, including by providing supplies or services in support of such activities.

(14) "Public Fund" means the assets of the District of Columbia Retirement Board, the Board of Trustees in charge of the District of Columbia Retirement Board.

(15) "Scrutinized Company" means a company, other than a Social Development Company which is not complicit in the Darfur genocide, that meets the criteria set forth in any of the following subparagraphs:

(A)(i) The company has Business Operations that involve contracts with, or provision of supplies or services; to:

- (I) The Government of Sudan;
 - (II) Companies in which the Government of Sudan has any direct or indirect equity share;
 - (III) Government of Sudan-commissioned consortiums or projects;
- or

(IV) Companies involved in Government of Sudan-commissioned consortiums or projects; and

(ii)(I)(aa) More than 10% of the company's revenues or assets linked to Sudan involve Oil-Related Activities or Mineral Extraction Activities;

(bb) Less than 75% of the company's revenues or assets linked to Sudan involve contracts with, or provision of Oil-Related or Mineral Extracting products or services to, the regional government of southern Sudan or a project or consortium created exclusively by that regional government; and

(cc) The company has failed to take Substantial Action; or

(II)(aa) More than 10% of the company's revenues or assets linked to Sudan involve Power Production Activities;

(bb) Less than 75% of the company's Power Production Activities

include projects whose intent is to provide power or electricity to the Marginalized Populations Of Sudan; and

(cc) The company has failed to take Substantial Action;

(B) The company is complicit in the Darfur genocide;

(C) The company supplies Military Equipment within Sudan, unless it clearly shows that the Military Equipment cannot be used to facilitate offensive military actions in Sudan or the company implements rigorous and verifiable safeguards to prevent use of that equipment by forces actively participating in armed conflict, including, through post-sale tracking of the equipment by the company, certification from a reputable and objective third party that the equipment is not being used by a party participating in armed conflict in Sudan, or sale of the equipment solely to the regional government of southern Sudan or any internationally recognized peacekeeping force or humanitarian organization.

(16) “Scrutinized Companies List” means a list of Scrutinized Companies compiled in accordance with § 1-335.02.

(17) “Social Development Company” means a company whose primary purpose in Sudan is to provide humanitarian goods or services, including medicine or medical equipment, agricultural supplies or infrastructure, educational opportunities, journalism-related activities, information or information materials, spiritual-related activities, services of a purely clerical or reporting nature, food, clothing, or general consumer goods that are unrelated to Oil-Related Activities, Mineral Extraction Activities, or Power Production Activities.

(18) “Substantial Action” means:

(A) Adopting, publicizing, and implementing a formal plan to cease Business Operations within one year and to refrain from any new Business Operations;

(B) Undertaking significant humanitarian efforts on behalf of one or more Marginalized Populations Of Sudan; or

(C) Through engagement with the Government of Sudan, materially improving conditions for the genocidally victimized population in Darfur.

(Feb. 2, 2008, D.C. Law 17-106, § 2, 54 DCR 12223.)

Legislative history of Law 17-106. — Law 17-106, the “Prohibition of the Investment of Public Funds in Certain Companies Doing Business with the Government of Sudan Act of 2007”, was introduced in Council and assigned Bill No. 17-134 which was referred to the Committee on Finance and Revenue. The Bill was

adopted on first and second readings on October 2, 2007, and November 6, 2007, respectively. Signed by the Mayor on November 29, 2007, it was assigned Act No. 17-225 and transmitted to both Houses of Congress for its review. D.C. Law 17-106 became effective on February 2, 2008.

§ 1-335.02. Identification of companies.

(a) Within 90 days after February 2, 2008, the Public Fund shall make its best efforts to identify all Scrutinized Companies in which the Public Fund has Direct Holdings, Indirect Holdings, or could possibly have such holdings in the future. Such efforts shall include, as appropriate:

(1) Reviewing and relying, as appropriate in the Public Fund’s judgment,

on publicly available information regarding companies with Business Operations in Sudan, including information provided by nonprofit organizations, research firms, international organizations, and government entities;

(2) Contacting asset managers contracted by the Public Fund that invest in companies with Business Operations in Sudan;

(3) Contacting other institutional investors that have divested from, or engaged with, companies that have Business Operations in Sudan.

(b) By the first meeting of the Public Fund following the 90-day period set forth in subsection (a) of this section, the Public Fund shall compile all Scrutinized companies identified into a Scrutinized Companies List.

(c) The Public Fund shall update the Scrutinized Companies List on a quarterly basis based on information from sources, including those listed in subsection (a) of this section.

(Feb. 2, 2008, D.C. Law 17-106, § 3, 54 DCR 12223.)

Legislative history of Law 17-106. — For Law 17-106, see notes following § 1-335.01.

§ 1-335.03. Required actions.

(a) Except as provided in subsections (c), (d), and (e) of this section, during the period that a company on the scrutinized Company List has Active Business Operations, the Public Fund shall sell, redeem, divest, or withdraw all publicly-traded securities of the company according to the following schedule:

(1) At least 50% of the assets shall be removed from the Public Fund's assets under management by 6 months after the company's most recent appearance on the Scrutinized Companies List.

(2) All of such assets shall be removed from the Public Fund's assets under management within 12 months after the company's most recent appearance on the Scrutinized Companies List.

(b) Except as provided in subsections (c), (d), and (e) of this section, the Public Fund shall not acquire securities of companies on the Scrutinized Companies List that have Active Business Operations.

(c) A company which the United States government affirmatively declares to be excluded from its present or any future federal sanctions regime relating to Sudan shall not be subject to the divestment or investment prohibition of subsections (a) and (b) of this section.

(d) Notwithstanding anything herein to the contrary, subsections (a) and (b) of this section shall not apply to Indirect Holdings in actively-managed investment funds; provided, that the Public Fund shall submit letters to the managers of actively-managed investment funds containing companies with Scrutinized Active Business Operations requesting that they consider removing such companies from the fund or create a similar actively-managed fund with Indirect Holdings devoid of such companies; provided further, that if the manager creates a similar fund, the Public Fund shall replace all applicable investments with investments in the similar fund in an expedited time period consistent with prudent investing standards. For the purposes of this section,

private equity funds shall be deemed to be actively-managed investment funds.

(e) Notwithstanding the foregoing, the District of Columbia Retirement Board shall comply with the requirements of this part only to the extent consistent with:

(1) Its fiduciary duties under Chapters 7 and 9 of this title [§ 1-701 et seq. and § 1-901 et seq.]; and

(2) Section 5 of the Sudan Accountability and Divestment Act of 2007, approved December 31, 2007 (121 Stat. 2516; 50 U.S.C. § 1701, note).

(Feb. 2, 2008, D.C. Law 17-106, § 4, 54 DCR 12223; Mar. 21, 2009, D.C. Law 17-337, § 201(a), 56 DCR 939.)

Effect of amendments. — D.C. Law 17-337, in subsecs. (a) and (b), substituted “(c), (d), and (e)” for “(c) and (d)”; and added subsec. (e).

Legislative history of Law 17-106. — For Law 17-106, see notes following § 1-335.01.

Legislative history of Law 17-337. — For Law 17-337, see notes following § 1-336.01.

§ 1-335.04. Reporting.

(a) The Public Fund shall transmit a publicly-available report to the Council and the Mayor that includes the Scrutinized Companies List within 30 days after the list is created.

(b) Annually thereafter, the Public Fund shall transmit a publicly-available report to the Council and the Mayor and send a copy of the report to the United States Presidential Special Envoy to Sudan (or an appropriate designee or successor) that includes:

(1) All investments sold, redeemed, divested, or withdrawn in compliance with § 1-335.03(a);

(2) All prohibited investments under § 1-335.03(b);

(3) Any progress made under § 1-335.03(d); and

(4) A list of any investments held by the Public Fund that would have been divested under § 1-335.03 but for § 1-335.03(e), including a statement of the reasons why a sale or transfer of the investments is inconsistent with the fiduciary responsibilities of the District of Columbia Retirement Board and the circumstances under which the District of Columbia Retirement Board anticipates that it will sell, transfer, or reduce the investment.

(Feb. 2, 2008, D.C. Law 17-106, § 5, 54 DCR 12223; Mar. 21, 2009, D.C. Law 17-337, § 201(b), 56 DCR 939.)

Effect of amendments. — D.C. Law 17-337, in subsec. (b), deleted “; and” from the end of par. (2), substituted “; and” for a period at the end of par. (3), and added par. (4).

Legislative history of Law 17-106. — For Law 17-106, see notes following § 1-335.01.

Legislative history of Law 17-337. — For Law 17-337, see notes following § 1-336.01.

§ 1-335.05. Indemnification.

Present, future, and former District of Columbia Retirement Board members and employees shall be indemnified by the District of Columbia from all claims

and liability, including court costs and attorney's fees, because of any action taken pursuant to this part.

(Feb. 2, 2008, D.C. Law 17-106, § 6, 54 DCR 12223; Mar. 21, 2009, D.C. Law 17-337, § 201(c), 56 DCR 939.)

Effect of amendments. — D.C. Law 17-337 rewrote the section which had read as follows: “§ 1-335.05 Other legal obligations. With respect to actions taken in compliance with this subchapter, including all good faith determinations regarding companies as required by this subchapter, the Public Fund shall be exempt from any conflicting statutory or common law

obligations, including any such obligations in respect to choice of asset managers, investment funds, or investments for the Public Fund's securities portfolios.”

Legislative history of Law 17-106. — For Law 17-106, see notes following § 1-335.01.

Legislative history of Law 17-337. — For Law 17-337, see notes following § 1-336.01.

§ 1-335.06. Reinvestment in certain companies with Active Business Operations.

(a)(1) Notwithstanding anything herein to the contrary, the Public Fund shall be permitted to cease divesting from certain Scrutinized Companies pursuant to § 1-335.03(b) or reinvest in certain Scrutinized Companies from which it divested pursuant to § 1-335.03(a) if clear and convincing evidence shows that the value for all assets under management by the Public Fund becomes equal to or less than 50% (50 basis points) of the hypothetical value of all assets under management by the Public Fund assuming no divestment for any company had occurred under § 1-335.03(a).

(2) Cessation of divestment, reinvestment, or any subsequent ongoing investment authorized by this section shall be strictly limited to the minimum steps necessary to avoid the contingency set forth in paragraph (1) of this subsection.

(b) For any cessation of divestment, reinvestment, or subsequent ongoing investment authorized by this section, the Public Fund shall provide a written report to the Council and the Mayor in advance of initial reinvestment, updated semiannually thereafter, as applicable, setting forth the reasons and justification, supported by clear and convincing evidence, for its decisions to cease divestment, reinvest, or remain invested in companies with Active Business Operations.

(c) This section shall not apply to reinvestment in companies on the ground that they have ceased to have Active Business Operations.

(Feb. 2, 2008, D.C. Law 17-106, § 7, 54 DCR 12223.)

Legislative history of Law 17-106. — For Law 17-106, see notes following § 1-335.01.

§ 1-335.07. Enforcement.

The Mayor shall enforce this part and may bring such legal action as is necessary to do so.

(Feb. 2, 2008, D.C. Law 17-106, § 8, 54 DCR 12223.)

Legislative history of Law 17-106. — For Law 17-106, see notes following § 1-335.01.

Part B

GOVERNMENT OF IRAN.

§ 1-336.01. Definitions.

For the purposes of this part, the term:

(1) “Company” means any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association that exists for the purpose of making profit.

(2) “Direct holdings” in a company means all securities of the company that are held directly by the public fund or in an account or fund in which the public fund owns all shares or interests.

(3) “Government of Iran” means the government of Iran, its instrumentalities, and companies owned or controlled by the government of Iran.

(4) “Inactive business activities” means the mere continued holding or renewal of rights to property previously operated for the purpose of generating revenues but not presently deployed for such purpose.

(5) “Indirect holdings” in a company means all securities of the company that are held in an account or fund, such as a mutual fund, managed by one or more persons not employed by the public fund, in which the public fund owns shares or interests together with other investors not subject to the provisions of this part.

(6) “Iran” means the Islamic Republic of Iran.

(7) “Petroleum resources” means petroleum or natural gas.

(8) “Public fund” means the assets of the District of Columbia Retirement Board.

(9) “Scrutinized business activities” means business activities that have resulted in a company becoming a scrutinized company.

(10) “Scrutinized company” means any company that, with actual knowledge, on or after August 5, 1996, has made an investment of \$20 million or more in Iran’s petroleum sector which directly or significantly contributes to the enhancement of Iran’s ability to develop the petroleum resources of Iran.

(11) “Substantial action specific to Iran” means adopting, publicizing, and implementing a formal plan to cease scrutinized business activities within one year and to refrain from any such new business activities.

(Mar. 21, 2009, D.C. Law 17-337, § 101, 56 DCR 939.)

Emergency legislation. — For temporary (90 day) repeal of section 301 of D.C. Law 17-337, see § 7026 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) repeal of section 301 of D.C. Law 17-337, see § 7026 of Fiscal Year

Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 17-337. — Law 17-337, the “Prohibition of the Investment of Public Funds in Certain Companies Doing Business with the Government of Iran and

Sudan Divestment Conformity Act of 2008", was introduced in Council and assigned Bill No. 17-657 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 18, 2008, and December 16, 2008, respectively. Signed by the Mayor on January 6, 2009, it was assigned Act No. 17-655 and transmitted to both Houses

of Congress for its review. D.C. Law 17-337 became effective on March 21, 2009.

Editor's notes. — Section 301 of D.C. Law 17-337 provided that this act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan.

Section 7026 of D.C. Law 18-111 repealed section 301 of D.C. Law 17-337.

§ 1-336.02. Identification of companies.

(a) Within 90 days after March 21, 2009, the public fund shall make its best efforts to identify all scrutinized companies in which the public fund has direct or indirect holdings. Such efforts shall include reviewing and relying, as appropriate in the public fund's judgment, on publicly available information regarding companies that have invested more than \$20 million in any given year since August 5, 1996, in Iran's petroleum energy sector, including information provided by nonprofit organizations, research firms, international organizations, and government entities.

(b) On or before the 1st meeting of the public fund held 90 days after March 21, 2009, the public fund shall compile a list of all scrutinized companies entitled "Scrutinized Companies With Activities in the Iran Petroleum Energy Sector List".

(c) The public fund shall update and make publicly available annually the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

(Mar. 21, 2009, D.C. Law 17-337, § 102, 56 DCR 939.)

Legislative history of Law 17-337. — For Law 17-337, see notes following § 1-336.01.

§ 1-336.03. Required actions.

(a) For each scrutinized company on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List:

(1)(A)(i) For each company in which the public fund has direct holdings newly identified under § 1-336.02, the public fund shall send a written notice informing the company of its scrutinized company status and that it may become subject to divestment by the public fund.

(ii) The notice shall inform the company of the opportunity to clarify its Iran-related activities and encourage the company, within 90 days, to cease its scrutinized business activities or convert such activities to inactive business activities to avoid qualifying for divestment by the public fund. The notice shall be sent no later than 135 days after the company is placed on the list.

(B) If, within 90 days after the public fund's notice to a company pursuant to this paragraph, the company announces by public disclosure substantial action specific to Iran, the public fund may maintain its direct holdings, but the company shall remain on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List pending completion of its cessation of scrutinized business activities.

(2)(A) If, after 90 days following the public fund's 1st notice to a company pursuant to paragraph (1) of this subsection, the company has not announced by public disclosure substantial action specific to Iran, or the public fund determines or becomes aware that the company continues to have scrutinized business activities, the public fund, within 8 months after the expiration of such 90-day period, shall sell, redeem, divest, or withdraw all publicly-traded securities of the company from the public fund's direct holdings.

(B) If the public fund determines or becomes aware that a company that ceased scrutinized business activities following engagement pursuant to paragraph (1) of this subsection has resumed such activities, the public fund shall:

(i) Send a written notice to the company as required under paragraph (1)(A)(ii) of this subsection;

(ii) Add the company to the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; and

(iii) Sell, redeem, divest, or withdraw as may be required by subparagraph (A) of this paragraph.

(C) The public fund shall monitor the scrutinized company that has announced by public disclosure substantial action specific to Iran. If, after one year, the public fund determines or becomes aware that the company has not implemented such substantial action, within 3 months after the expiration of such one-year period, the public fund shall sell, redeem, divest, or withdraw all publicly-traded securities of the company from the public fund's direct holdings, and the company also shall be immediately reintroduced onto the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

(b) The public fund shall not acquire securities of companies on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

(c) Notwithstanding the provisions of this part, subsection (a)(2) of this section shall not apply to the public fund's indirect holdings; provided, that the public fund shall submit letters to the managers of any managed investment funds containing companies on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List that they consider removing such companies from the fund or create a similar actively-managed fund having indirect holdings devoid of such companies. If the manager creates a similar fund without such securities or if such funds are created elsewhere, the District of Columbia Retirement Board shall determine within 6 months whether to replace all applicable investments with investments in the similar fund in an expedited time period consistent with prudent investing standards. For the purposes of this section, a private equity fund shall be deemed to be an actively-managed investment fund.

(d) The District of Columbia Retirement Board shall comply with the requirements of this part only to the extent consistent with:

(1) Its fiduciary duties under Chapters 7 and 9 of this title [§ 1-701 et seq. and § 1-901 et seq.]; and

(2) Section 5 of the Sudan Accountability and Divestment Act of 2007, approved December 31, 2007 (121 Stat. 2516; 50 U.S.C. 1701 note).

(Mar. 21, 2009, D.C. Law 17-337, § 103, 56 DCR 939.)

Legislative history of Law 17-337. — For Law 17-337, see notes following § 1-336.01.

§ 1-336.04. Reporting.

(a) The public fund shall send a report to each member of the District of Columbia Retirement Board, the Council, and the Mayor that includes the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List within 30 days after the list is created. The report shall be made available to the public.

(b) Annually thereafter, the public fund shall send a publicly available report to the Council and the Mayor that includes:

- (1) All investments sold, redeemed, divested, or withdrawn in compliance with § 1-336.03(a);
- (2) All prohibited investments under § 1-336.03(b);
- (3) Any progress made under § 1-336.03(e);
- (4) A list of all publicly-traded securities held directly by the public fund; and

(5) A list of any investments held by the public fund that would have been divested under § 1-336.03(a), but for § 1-336.03(d), including a statement of the reasons why a sale or transfer of the investments is inconsistent with the fiduciary responsibilities of the District of Columbia Retirement Board, and the circumstances under which the District of Columbia Retirement Board anticipates that it will sell, transfer, or reduce the investments.

(Mar. 21, 2009, D.C. Law 17-337, § 104, 56 DCR 939.)

Legislative history of Law 17-337. — For Law 17-337, see notes following § 1-336.01.

§ 1-336.05. Liability.

Present, future, and former District of Columbia Retirement Board members and employees shall be indemnified by the District of Columbia from all claims and liability, including court costs and attorney's fees, because of any action taken pursuant to this part.

(Mar. 21, 2009, D.C. Law 17-337, § 105, 56 DCR 939.)

Legislative history of Law 17-337. — For Law 17-337, see notes following § 1-336.01.

§ 1-336.06. Sunset.

This part shall expire upon the occurrence of any of the following:

- (1) The Congress or President of the United States unambiguously states, by means including legislation, executive order, or written certification from

the President to Congress, that the government of Iran has ceased to pursue the capabilities to develop nuclear weapons and support international terrorism;

(2) The United States revokes all sanctions imposed against the government of Iran; or

(3) The Congress or President of the United States affirmatively and unambiguously declares, by means including legislation, executive order, or written certification from the President to Congress, that mandatory divestment of the type provided for in this part interferes with the conduct of United States foreign policy.

(Mar. 21, 2009, D.C. Law 17-337, § 106, 56 DCR 939.)

Emergency legislation. — For temporary (90 day) addition of sections, see §§ 1042 to 1053 of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) addition of sections,

see §§ 1042 to 1053 of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 17-337. — For Law 17-337, see notes following § 1-336.01.

CHAPTER 4. DELEGATE TO THE HOUSE OF REPRESENTATIVES.

Sec.

1-401. Delegate to the House of Representatives from the District of Columbia.

Sec.

1-402. Applicability of federal laws.

§ 1-401. Delegate to the House of Representatives from the District of Columbia.

(a) The people of the District of Columbia shall be represented in the House of Representatives by a Delegate, to be known as the "Delegate to the House of Representatives from the District of Columbia", who shall be elected by the voters of the District of Columbia in accordance with subchapter I of Chapter 10 of this title. The Delegate shall have a seat in the House of Representatives, with the right of debate, but not of voting, shall have all the privileges granted a Representative by § 6 of Article I of the Constitution, and shall be subject to the same restrictions and regulations as are imposed by law or rules on Representatives. The Delegate shall be elected to serve during each Congress.

(b)(1) No individual may hold the Office of Delegate to the House of Representatives from the District of Columbia unless on the date of his election:

(A) He is a qualified elector (as that term is defined in § 1-1001.02(2)) of the District of Columbia;

(B) He is at least 25 years of age;

(C) He holds no other paid public office; and

(D) He has resided in the District of Columbia continuously since the beginning of the 3-year period ending on such date.

(2) He shall forfeit his office upon failure to maintain the qualifications required by this subsection.

(Sept. 22, 1970, 84 Stat. 848, Pub. L. 91-405, title II, § 202.)

Prior Codifications. — 1981 Ed., § 1-401. 1973 Ed., § 1-291.

§ 1-402. Applicability of federal laws.

The provisions of law which appear in:

- (1) Section 25 (relating to oath of office),
- (2) Section 31 (relating to compensation),
- (3) Section 34 (relating to payment of compensation),
- (4) Section 35 (relating to payment of compensation),
- (5) Section 37 (relating to payment of compensation),
- (6) Section 38a (relating to compensation),
- (7) Section 39 (relating to deductions for absence),
- (8) Section 40 (relating to deductions for withdrawal),
- (9) Section 40a (relating to deductions for delinquent indebtedness),
- (10) Section 41 [repealed] (relating to prohibition on allowance for newspapers),
- (11) Section 42c [repealed] (relating to postage allowance),

- (12) Section 46b [repealed] (relating to stationery allowance),
 - (13) Section 46b-1 (relating to stationery allowance),
 - (14) Section 46b-2 [repealed] (relating to stationery allowance),
 - (15) Section 46g [repealed] (relating to telephone, telegraph, and radio-telegraph allowance),
 - (16) Section 47 (relating to payment of compensation),
 - (17) Section 48 (relating to payment of compensation),
 - (18) Section 49 (relating to payment of compensation),
 - (19) Section 50 (relating to payment of compensation),
 - (20) Section 54 (relating to provision of United States Code Annotated or Federal Code Annotated),
 - (21) Section 60g-1 [repealed] (relating to clerk hire),
 - (22) Section 60g-2(a) (relating to interns),
 - (23) Section 80 (relating to payment of compensation),
 - (24) Section 81 [repealed] (relating to payment of compensation),
 - (25) Section 82 [repealed] (relating to payment of compensation),
 - (26) Section 92 (relating to clerk hire),
 - (27) Section 92b (relating to pay of clerical assistants),
 - (28) Section 112e (relating to electrical and mechanical office equipment),
 - (29) Section 122 [repealed] (relating to office space in the District of Columbia), and
 - (30) Section 123b (relating to use of House Recording Studio),
- of Title 2 of the United States Code shall apply with respect to the Delegate to the House of Representatives from the District of Columbia in the same manner and to the same extent as they apply with respect to a Representative. The Federal Corrupt Practices Act [repealed] and the Federal Contested Election Act shall apply with respect to the Delegate to the House of Representatives from the District of Columbia in the same manner and to the same extent as they apply with respect to a Representative.

(Sept. 22, 1970, 84 Stat. 852, Pub. L. 91-405, title II, § 204(a).)

Prior Codifications. — 1981 Ed., § 1-402.
1973 Ed., § 1-292.

References in text. — Sections 41, 42c, 46b, 46b-2, and 46g of Title 2 of the United States Code, referred to in (10), (11), (12), (14), and (15), respectively, were repealed by § 203 of the Act of August 20, 1996, Pub. L. 104-186, Title II, 110 Stat. 1726.

Section 60g-1 of Title 2 of the United States Code, referred to in (21), was repealed by § 477(a)(2) of the Act of October 26, 1970, Pub. L. 91-510, effective immediately prior to noon on January 3, 1971.

Section 81 of Title 2 of the United States Code, referred to in (24), was repealed by § 505(2) of the Act of July 12, 1974, Pub. L. 93-344, 88 Stat. 322.

Section 82 of Title 2 of the United States Code, referred to in (25), was repealed by § 220(d) and (e) of the Act of June 6, 1972, Pub. L. 92-310, 86 Stat. 204.

Section 122 of Title 2 of the United States Code, referred to in (29), was repealed by § 111 of the Act of September 30, 1978, Pub. L. 95-391, 92 Stat. 778.

The “Federal Corrupt Practices Act”, referred to in the last paragraph, was repealed by § 405 of the Federal Election Campaign Act of 1971, approved February 7, 1972, Pub. L. 92-225, 86 Stat. 3.

The “Federal Contested Election Act”, referred to in the last paragraph, is the Act of December 5, 1969, Pub. L. 91-138, 83 Stat. 284.

CHAPTER 5. OFFICERS AND EMPLOYEES GENERALLY.

Subchapter I. General

Sec.

- 1-501. Oath to be taken by officers.
- 1-502. Reports by custodians of property.
- 1-503. Employment to be authorized and compensation to be paid from specific appropriations; moneys returned to Treasury.
- 1-504. Designation by Mayor of Dr. King's birthday as holiday.
- 1-505. Effect of signature by mark upon payment of compensation.
- 1-506. Refusal to give testimony relating to office or employment.
- 1-507. Wages, salaries, annuities, retirement, disability benefits, and other remuneration based on District employment subject to attachment garnishment, and assignment for child support, maintenance, alimony payments, and other obligations.
- 1-508. [Expired].
- 1-509. Allowances for privately owned vehicles for employees.
- 1-510. Exemption of District government employees on compressed schedule from federal overtime requirements.
- 1-511. Review of personnel practices.

Subchapter I-A. Residency Preferences and Requirements for Government Employees

- 1-515.01. District residency preference for employees; District residency requirement for agency heads.

Subchapter II. Affirmative Action in District Government Employment

- 1-521.01. Goal; "available work force" defined.
- 1-521.02. Agency affirmative action plan — Development; submission.
- 1-521.03. Agency affirmative action plan — Goal of representation; actual employment levels.

Sec.

- 1-521.04. Agency affirmative action plan — Projections of hires and promotions for period of plan.
- 1-521.05. Agency affirmative action plan — Program for securing equal employment opportunity.
- 1-521.06. Continuing responsibility of agencies for equal employment opportunity.
- 1-521.07. Agency affirmative action plan; number of hires, promotions and terminations during period of plan.
- 1-521.08. Detail by Mayor of nonuniformed equal employment opportunity officers and specialists to Office of Human Rights; limitation; uniformed positions unaffected.

Subchapter III. Mayoral Nominees

- 1-523.01. Mayoral nominees.

Subchapter IV. Modifications of Board of Education Reduction-In-Force Procedures

- 1-525.01. Modifications of Board of Education Reduction-in-Force procedures.

Subchapter V. Vesting Under Previous District of Columbia Retirement Program

- 1-527.01. Vesting under previous District of Columbia retirement program.

Subchapter VI. Spouse Equity

- 1-529.01. Application.
- 1-529.02. Definitions.
- 1-529.03. Compliance with court orders.
- 1-529.04. Enrollment in health benefits plan.
- 1-529.05. Rules.

Subchapter VII. Office of Labor Relations and Collective Bargaining

- 1-531.01. Reimbursement for representation by Office of Labor Relations and Collective Bargaining.
- 1-531.02. Budget for Office of Labor Relations and Collective Bargaining.

Subchapter I. General.

§ 1-501. Oath to be taken by officers.

All civil officers in the District shall, before they act as such, respectively take and subscribe an oath or affirmation to support the Constitution of the United States, and faithfully to discharge the duties of their respective offices; and the oath or affirmation provided for by this section shall be taken and

subscribed, certified, and recorded, in such manner and form as may be prescribed by law.

(R.S., D.C., § 85; June 20, 1874, 18 Stat. 116, ch. 337, § 2; June 11, 1878, 20 Stat. 103, ch. 180, § 2.)

Prior Codifications. — 1981 Ed., § 1-501.
1973 Ed., § 1-308.

Editor's notes. — Establishment of District

of Columbia Board of Appeals and Review: See Mayor's Order 96-27, March 5, 1996 (43 DCR 1367).

§ 1-502. Reports by custodians of property.

All persons in the employment of the government of the District of Columbia having, as a result of such employment, custody of or chargeable with property, other than real estate, belonging to the District of Columbia, shall, at such times and in such form as the Mayor of the District of Columbia shall require, make returns to said Mayor of all such property remaining in their possession, and the condition thereof, and, with reference to all property that may have come into their custody that shall have been consumed in use, a statement showing the quantity thereof and the purpose for which used.

(July 21, 1914, 38 Stat. 553, ch. 191, § 7; Mar. 3, 1915, 38 Stat. 925, ch. 80, § 7.)

Prior Codifications. — 1981 Ed., § 1-502.
1973 Ed., § 1-309.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 1-503. Employment to be authorized and compensation to be paid from specific appropriations; moneys returned to Treasury.

No civil officer, clerk, draftsman, compensation messenger, assistant messenger, mechanic, watchman, laborer, or other employee shall, after June 30, 1905, be employed in any office, department, or other branch of the government of the District of Columbia or be paid from any appropriation made for contingent expenses, or for any specific or general purpose, unless such employment is authorized and payment therefor specifically provided in the law granting the appropriation or is authorized as hereinafter provided, and then only for services actually rendered in connection with and for the purposes of the appropriation from which payment is made and at the rate of compensation usual and proper for such services, and on and after July 1, 1905, all moneys accruing from lapsed salaries, or for unused appropriations

for salaries, shall be covered into the Treasury as are the balances of other unexpended appropriations for the support of the government of the District of Columbia.

(Mar. 3, 1905, 33 Stat. 913, ch. 1406, § 2.)

Prior Codifications. — 1981 Ed., § 1-503. 1973 Ed., § 1-310.

§ 1-504. Designation by Mayor of Dr. King's birthday as holiday.

The Mayor is authorized to designate the holiday in honor of Dr. King as a holiday for all employees of the government of the District of Columbia. Employees who are required to work on that holiday shall be entitled to such pay as they are entitled to on other holidays during which they work.

(July 12, 1977, D.C. Law 2-13, § 3, 24 DCR 1443.)

Cross references. — Holidays, recognition of Dr. King's birthday, see § 28-2701.

Merit system, continuation of existing laws, see § 1-632.06.

Prior Codifications. — 1981 Ed., § 1-504. 1973 Ed., § 1-314b.

Legislative history of Law 2-13. — Law 2-13 was introduced in Council and assigned

Bill No. 2-35, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on March 22, 1977 and April 5, 1977, respectively. Signed by the Mayor in May 2, 1977, it was assigned Act No. 2-35 and transmitted to both Houses of Congress for its review.

§ 1-505. Effect of signature by mark upon payment of compensation.

After May 10, 1926, in the payment of compensation of per diem employees of the government of the District of Columbia, a signature by mark duly witnessed by an employee of such District designated for that purpose by the Mayor shall be deemed a full legal acquittance as to such signature.

(May 10, 1926, 44 Stat. 453, ch. 276, § 7.)

Prior Codifications. — 1981 Ed., § 1-505. 1973 Ed., § 1-315.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of the Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 1-506. Refusal to give testimony relating to office or employment.

(a) Any officer or employee of the District who refuses to testify upon

matters relating to his office or employment in any proceeding wherein he is a defendant or is called as a witness upon the ground that his answer may tend to incriminate him or compel him to be a witness against himself, or who refuses so to testify on such ground when called by a grand jury or a congressional committee, shall forfeit his office or employment and any emolument, perquisite, or benefit (by way of pension or otherwise) arising therefrom, and be disqualified from holding any public office or employment under the District.

(b) Any former officer or employee of the District who refuses to testify upon matters relating to his former office or employment in any proceeding wherein he is a defendant or is called as a witness upon the ground that his answer may tend to incriminate him or compel him to be a witness against himself, or who refuses so to testify on such ground when called by a grand jury or a congressional committee, shall forfeit any emolument, perquisite, or benefit (by way of pension or otherwise) arising from such former office or employment, and be disqualified from holding any public office or employment under the District.

(c) If the retirement pay, pension, or annuity of any officer or employee or former officer or employee of the District is forfeited under this section, there shall be paid to such individual a sum equal to (1) the total amount paid by him as contributions toward such retirement pay, pension, or annuity, plus any accrued interest attributable to such contributions, less (2) the total amount of such retirement pay, pension, or annuity received by him prior to such forfeiture.

(June 29, 1953, 67 Stat. 108, ch. 159, title IV, § 409.)

Prior Codifications. — 1981 Ed., § 1-506. 1973 Ed., § 1-319.

§ 1-507. Wages, salaries, annuities, retirement, disability benefits, and other remuneration based on District employment subject to attachment garnishment, and assignment for child support, maintenance, alimony payments, and other obligations.

(a) After July 25, 1977, wages, salaries, annuities, retirement and disability benefits, and other remuneration based upon employment, or other income owed by, due from, and payable by the government of the District of Columbia to any individual shall be subject to attachment, garnishment, assignment, or withholding under the District of Columbia Child Support Enforcement Amendment Act of 1985, provided the levy is predicated upon the entry of a judgment, order, or decree determining the individual's legal obligation to provide child support or to make maintenance or alimony payments. Whenever wages, salaries, annuities, retirement and disability benefits, or other remuneration based upon employment is sought to be levied pursuant to this section, the legal process shall be such as is usual in other cases of attachment, garnishment, assignment, or withholding under the District of Columbia Child

Support Enforcement Amendment Act of 1985. The government of the District of Columbia shall be subject to process in the same manner and to the same extent as if it were a private person, except that no writ or similar process served under the authority of this section shall be honored by the government of the District of Columbia unless a certified copy of the judgment, order, or decree upon which the levy is predicated has been provided to the Mayor of the District of Columbia or his duly authorized designee.

(b) After October 1, 1997, wages salaries, annuities, retirement and disability benefits, and other remuneration based upon employment, or other income owed by, due from, and payable by the government of the District of Columbia to any individual shall be subject to attachment, garnishment, assignment, or withholding in accordance with subchapter III of chapter 5 of title 16 of the District of Columbia Code in the same manner and to the same extent as if the government of the District of Columbia were a private person.

(July 26, 1977, D.C. Law 2-14, § 2, 24 DCR 1774; Feb. 24, 1987, D.C. Law 6-166, § 33(d), 33 DCR 6710; Aug. 5, 1997, 111 Stat. 784, Pub. L. 105-33, § 11713.)

Cross references. — Attachment and garnishment of wages, see § 16-571 et seq.

Child Support Enforcement Amendment Act of 1985, see § 46-201 et seq.

Prior Codifications. — 1981 Ed., § 1-516. 1973 Ed., § 1-323.

Legislative history of Law 2-14. — Law 2-14 was introduced in Council and assigned Bill No. 2-91, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on April 5, 1977 and May 3, 1977, respectively. Signed by the Mayor on May 23, 1977, it was assigned Act No. 2-42 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-166. — Law 6-166 was introduced in Council and assigned Bill No. 6-134, which was referred to the Committee On Human Services. The Bill was adopted on first and second readings on July 8, 1986 and September 23, 1986, respectively. Signed by the Mayor on October 9, 1986, it was assigned Act No. 6-212 and transmitted to both Houses of Congress for its review.

References in text. — The “District of Columbia Child Support Enforcement Amendment Act of 1985,” referred to in the first and second sentences of (a), is D.C. Law 6-166.

CASE NOTES

In general.

If the garnishment of District of Columbia workers' salaries is to be permitted, then that relief lies within the province of the legislative

branch—whether the Congress or the District Council—not the courts. *Allied Capital Lending Corp. v. Stubbs*, 123 WLR 389 (Super. Ct. 1995).

§ 1-508. Technical assistance. [Expired].

Expired.

(Aug. 5, 1997, 111 Stat. 786, Pub. L. 105-33, § 11722.)

Cross references. — Merit system, effective date provisions, see § 1-636.02

Prior Codifications. — 1981 Ed., § 1-517.

Effective date. — Section 11721 of Title XI of Pub. L. 105-33, 111 Stat. 786, the National Capital Revitalization and Self-Government Improvement Act of 1997, provided that except as otherwise provided in this title, the provi-

sions of this title shall take effect on the later of October 1, 1997, or the day the District of Columbia Financial Responsibility and Management Assistance Authority certifies that the financial plan and budget for the District government for fiscal year 1998 meet the requirements of section 201(c)(1) of the District of Columbia Financial Responsibility and Man-

agement Assistance Act of 1995, as amended by this title.

Pub. L. 105-33, this section expired effective August 6, 2000.

Editor's notes. — Pursuant to § 11722 of

§ 1-509. Allowances for privately owned vehicles for employees.

The Mayor may establish rates and reimburse employees, by regulation, for privately owned automobiles and motorcycles used for the performance of official duties. The rates established by the Mayor shall not exceed the maximum prevailing rates for such vehicles as prescribed in the Federal Property Management Regulations 101-7 (Federal Travel Regulations). The proposed regulations shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the regulations, in whole or in part, by resolution within the 45-day review period, the proposed rules shall be deemed approved.

(Oct. 19, 2000, D.C. Law 13-172, § 3202, 47 DCR 6308.)

Prior Codifications. — 1981 Ed., § 1-518.

Emergency legislation. — For temporary (90-day) addition of section, see § 3202 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see § 3202 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 13-172. — Law 13-172, the “Fiscal Year 2001 Budget Support Act of 2000,” was introduced in Council and assigned Bill No. 13-679, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 18, 2000, and June 6, 2000, respectively. Signed by the Mayor on June 26, 2000, it was assigned Act No. 13-375 and transmitted to both Houses of Congress for its review. D.C. Law 13-172 became effective on October 19, 2000.

§ 1-510. Exemption of District government employees on compressed schedule from federal overtime requirements.

(a) *In general.* — Section 7 of the Fair Labor Standards Act (29 U.S.C. § 207) shall not apply to the hours of an employee of the District of Columbia government which constitute a compressed schedule.

(b) *Compressed schedule defined.* — In this section, the term “compressed schedule” means:

(1) In the case of a full-time employee, an 80-hour biweekly basic work requirement which is scheduled for less than 10 workdays; and

(2) In the case of a part-time employee, a biweekly basic work requirement of less than 80 hours which is scheduled for less than 10 workdays.

(c) *Effective date.* — This section shall apply with respect to hours occurring on or after October 30, 2004.

(Oct. 30, 2004, 118 Stat. 2230, Pub. L. 108-386, § 6.)

Effective date. — Section 9 of Pub. L. 108-386, 118 Stat. 2228, the 2004 District of Columbia Omnibus Authorization Act, provided: “The

amendments made by this section shall take effect on the date of the enactment of this Act Oct. 30, 2004.”

§ 1-511. Review of personnel practices.

(a) The District of Columbia Department of Human Resources shall conduct a comprehensive review of all regulations, policies, and standard operating procedures under its control to ensure compliance with all local and federal laws.

(b) On or before March 1, 2012, and every 3 months thereafter until this review is complete, the District of Columbia Department of Human Resources shall report to the Council on the status of this review, the components that have been completed, the components that remain outstanding, and the projected timeline for completion of this project.

(Mar. 14, 2012, D.C. Law 19-115, § 3, 59 DCR 461.)

Legislative history of Law 19-115. — For history of Law 19-115, see notes under § 1-608.01.

Subchapter I-A. Residency Preferences and Requirements for Government Employees.

§ 1-515.01. District residency preference for employees; District residency requirement for agency heads.

(a) Notwithstanding any other provision of law, all District subordinate agencies, independent agencies, and instrumentalities shall use a ranking system based on a scale of 100 points for all employment decisions for positions equivalent to Career Service, educational employee, Legal Service, and Management Supervisory Service positions, as defined under § 1-603.01(3), (6), (13A), and (13B), and shall award each District resident applicant a preference of 10 points unless the resident declines the preference points. The 10 preference points shall be in addition to any points awarded on the 100-point scale.

(b) An applicant claiming a hiring preference shall submit no less than 8 proofs of bona fide residency in a manner determined by the Mayor. If hired, the employee shall agree in writing to maintain bona fide District residency for a period of 7 consecutive years from the effective date of hire and shall provide proof of such residency annually to the director of personnel for the agency or instrumentality for the first 7 years of employment. Failure to maintain District residency for the consecutive 7-year period shall result in forfeiture of employment.

(c)(1) Each subordinate agency head shall submit to the Mayor and the Council quarterly reports detailing the names of all new employees and their pay schedules, titles, and place of residence. The report shall explain the reasons for employment of non-District residents. The Mayor shall integrate into each subordinate agency's annual performance objectives the rate of success in hiring District residents.

(2) Each independent agency and instrumentality shall submit to the

Mayor and the Council annual reports detailing the names of all new employees and their pay schedules, titles, and place of residence. The reports shall explain the reasons for employment of non-District residents.

(d) The Mayor shall conduct annual audits of each subordinate agency's personnel records to ensure that all persons claiming a residency preference at time of hiring complies with the provisions of subsection (b) of this section. Audit reports shall be submitted annually to the Council.

(e) Each subordinate agency, independent agency, and instrumentality head shall be a resident of the District of Columbia throughout his or her tenure and shall forfeit his or her position if he or she fails to remain a resident of the District of Columbia.

(f) The Mayor may issue rules to implement the provisions of this subchapter.

(Feb. 6, 2008, D.C. Law 17-108, § 101, 54 DCR 10993; Mar. 25, 2009, D.C. Law 17-353, § 223(a), 56 DCR 1117.)

Effect of amendments. — D.C. Law 17-353 validated a previously made technical correction in subsec. (a).

Legislative history of Law 17-108. — Law 17-108, the "Jobs for D.C. Residents Amendment Act of 2007", was introduced in Council and assigned Bill No. 17-185 which was referred to the Committee on Workforce Development and Government Operations. The Bill was adopted on first and second readings on July 10, 2007, and October 2, 2007, respec-

tively. Signed by the Mayor on October 26, 2007, it was assigned Act No. 17-172 and transmitted to both Houses of Congress for its review. D.C. Law 17-108 became effective on February 6, 2008.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 1-129.05.

Editor's notes. — Section 7094 of D.C. Law 17-219 repealed section 301 of D.C. Law 17-108.

Subchapter II. Affirmative Action in District Government Employment.

§ 1-521.01. Goal; "available work force" defined.

The goal of affirmative action in employment throughout the District government is, and must continue to be, full representation, in jobs at all salary and wage levels and scales, in accordance with the representation of all groups in the available work force of the District of Columbia, including, but not limited to, Blacks, Whites, Spanish-speaking Americans, Native Americans, Asian Americans, females, and males. As used in §§ 1-521.01 to 1-521.08, "available work force" means the total population of the District of Columbia between the ages of 18 and 65.

(May 6, 1976, D.C. Law 1-63, § 2, 22 DCR 6538.)

Cross references. — Merit system, continuation of existing laws, see § 1-632.06.

Merit system, equal employment opportunity, affirmative action, see § 1-607.01.

Prior Codifications. — 1981 Ed., § 1-507. 1973 Ed., § 1-320a.

Legislative history of Law 1-63. — Law 1-63 was introduced in Council and assigned Bill No. 1-133, which was referred to the Com-

mittee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on November 18, 1975 and December 2, 1975, respectively. Disapproved by the Mayor on December 24, 1975, reenacted on January 19, 1976, and signed by the President on February 27, 1976, it was assigned Act No. 1-87 and transmitted to both Houses of Congress for its review.

CASE NOTES

ANALYSIS

Promotions.
Validity.

Promotions.

Although defendants' affirmative action plan itself contained only very general statements of affirmative action policy, and city administrator with concurrence of mayor purported to follow departmental policy, evidence demonstrated that administrator's vision of appropriate affirmative action was his own and exceeded scope of the plan and did not authorize promotion of those persons who were promoted, by reason of race, and plaintiffs therefore met their burden of showing that consideration of race in such promotions was intentional and impermissible under Title VII and the 1871 civil rights statute. 42 U.S.C. § 1981; U.S.C. Const.Amend. 5;

Civil Rights Act of 1964, § 701 et seq., 42 U.S.C. § 2000e et seq.; D.C. Code 1981, §§ 1-507 to 1-514. *Dougherty v. Barry*, 607 F. Supp. 1271, 1985 U.S. Dist. LEXIS 20235 (1985), vacated in part by, remanded by 869 F.2d 605, 276 U.S. App. D.C. 167, 1989 U.S. App. LEXIS 2722, 49 Empl. Prac. Dec. (CCH) P38786, 49 Fair Empl. Prac. Cas. (BNA) 289 (1989).

Validity.

District of Columbia's statutory goal of racially balanced work force is not only inadequate ground upon which to support affirmative action plan but is ground which is condemned by Title VII and the Constitution. Civil Rights Act of 1964, § 701 et seq., as amended, 42 U.S.C. § 2000e et seq.; U.S.C. Const.Amend. 5, 14; D.C. Code 1981, § 1-507. *Hammon v. Barry*, 813 F.2d 412, 1987 U.S. App. LEXIS 2803 (C.A.D.C. 1987).

§ 1-521.02. Agency affirmative action plan — Development; submission.

Every District government agency shall develop and submit to the Mayor and Council an affirmative action plan. Such plan shall be submitted within 12 calendar weeks after May 6, 1976, and each year thereafter, at the time each agency's annual budget is submitted to the Council.

(May 6, 1976, D.C. Law 1-63, § 3, 22 DCR 6538.)

Section references. — This section is referred to in § 1-521.01.

Prior Codifications. — 1981 Ed., § 1-508. 1973 Ed., § 1-320b.

Legislative history of Law 1-63. — For legislative history of D.C. Law 1-63, see Historical and Statutory Notes following § 1-521.01.

CASE NOTES

ANALYSIS

Remedial action.
Validity.

Remedial action.

There must be direct nexus between race-preferential action and remediation of discrimination. *Hammon v. Barry*, 813 F.2d 412, 1987 U.S. App. LEXIS 2803 (C.A.D.C. 1987).

Even if District of Columbia's hiring procedures for fire fighters constituted a Title VII violation necessitating remedial action, the race-based affirmative action plan proposed by the District was not sufficiently narrowly tailored to accomplish the remedial purpose and could not be upheld in view of other remedies available. Civil Rights Act of 1964, § 701 et seq., as amended, 42 U.S.C. § 2000e et seq.

Hammon v. Barry, 813 F.2d 412, 1987 U.S. App. LEXIS 2803 (C.A.D.C. 1987).

Validity.

District of Columbia's statutory goal of racially balanced work force is not only inadequate ground upon which to support affirmative action plan but is ground which is condemned by Title VII and the Constitution. Civil Rights Act of 1964, § 701 et seq., as amended, 42 U.S.C. § 2000e et seq.; U.S.C. Const.Amend. 5, 14; D.C. Code 1981, § 1-507. *Hammon v. Barry*, 813 F.2d 412, 1987 U.S. App. LEXIS 2803 (C.A.D.C. 1987).

Hiring provision of affirmative action plan containing racial quotas could not stand where structure of discrimination had long since been dismantled, there were no present day impediments to hiring of blacks, and there were no

relics from yesteryear to overcome. *Hammon v. Barry*, 813 F.2d 412, 1987 U.S. App. LEXIS 2803 (C.A.D.C. 1987).

§ 1-521.03. Agency affirmative action plan — Goal of representation; actual employment levels.

(a) Each plan shall state the number of females and males who are Black, White, Spanish-speaking, Native American, and Asian American, who would, by using the goal of their representation in the available work force in the District, be employed by the agency at the actual employment levels in the agency at the time the plan is submitted. Such numbers shall be broken down:

- (1) Agency wide;
- (2) Within each office in the agency; and
- (3) Within each pay level of each salary scale in the agency.

(b) These shall be the goals, not the quotas, of the plan. The plan shall also state the actual employment levels in the agency, broken down in the same way as the goals, and the difference between the actual employment and the goals.

(May 6, 1976, D.C. Law 1-63, § 4, 22 DCR 6539.)

Section references. — This section is referred to in §§ 1-521.01, 1-521.04, and 1-521.05.

Prior Codifications. — 1981 Ed., § 1-509.

1973 Ed., § 1-320c.

Legislative history of Law 1-63. — For legislative history of D.C. Law 1-63, see Historical and Statutory Notes following § 1-521.01.

§ 1-521.04. Agency affirmative action plan — Projections of hires and promotions for period of plan.

The plan shall state the number of hires and promotions the agency projects for the period until the next plan is submitted, and the number of hires and promotions of the groups enumerated in § 1-521.03, projected for that period. Such projections shall be broken down in the manner provided in § 1-521.03.

(May 6, 1976, D.C. Law 1-63, § 5, 22 DCR 6539.)

Section references. — This section is referred to in § 1-521.01.

Prior Codifications. — 1981 Ed., § 1-510.
1973 Ed., § 1-320d.

Legislative history of Law 1-63. — For legislative history of D.C. Law 1-63, see Historical and Statutory Notes following § 1-521.01.

§ 1-521.05. Agency affirmative action plan — Program for securing equal employment opportunity.

The plan shall further state what actions the agency is taking to secure the equal employment opportunity within the agency of the groups enumerated in § 1-521.03, and of the aging, the young, the handicapped, and the homosexual citizens of the District, whether such citizens be actual or potential employees of the District government.

(May 6, 1976, D.C. Law 1-63, § 6, 22 DCR 6539.)

Section references. — This section is referred to in §§ 1-521.01 and 1-521.07.

Prior Codifications. — 1981 Ed., § 1-511. 1973 Ed., § 1-320e.

Legislative history of Law 1-63. — For legislative history of D.C. Law 1-63, see Historical and Statutory Notes following § 1-521.01.

§ 1-521.06. Continuing responsibility of agencies for equal employment opportunity.

Equal employment opportunity is a continuing responsibility of every agency, whether or not the hiring and promotion goals in affirmative action employment plans have been reached.

(May 6, 1976, D.C. Law 1-63, § 7, 22 DCR 6540.)

Section references. — This section is referred to in § 1-521.01.

Prior Codifications. — 1981 Ed., § 1-512. 1973 Ed., § 1-320f.

Legislative history of Law 1-63. — For legislative history of D.C. Law 1-63, see Historical and Statutory Notes following § 1-521.01.

CASE NOTES

Promotional examinations.

City officials lacked strong basis in evidence to believe there existed equally valid, less-discriminatory alternative to use of city's promotional examinations that served city's needs but that city refused to adopt, and that use of examination results therefore would have disparate impact on minorities, and, thus, officials failed to establish defense on such basis to liability under Title VII's disparate-treatment provision, where there was no evidence that changing formula for weighing written and oral portions of test was equally valid way of choosing candidates, "banding" alternative would have violated Title VII and thus was not available to city, and isolated statements by industrial/organizational psychologist could not be basis for finding equally valid alternatives. *Ricci v. DeStefano*, 129 S.Ct. 2658, 2009 U.S. LEXIS 4945 (2009).

City officials lacked strong basis in evidence to believe that city's promotional examinations for firefighters were not job-related and consistent with business necessity, and that use of examination results therefore would have disparate impact on minorities, and, thus, officials failed to establish defense on such basis to liability under Title VII's disparate-treatment provision, where written examinations were devised after painstaking analyses of captain and lieutenant positions, examination's developer drew questions from source material approved by fire department, developer addressed challenges to particular questions, and city turned blind eye to evidence that supported examinations' validity. *Ricci v. DeStefano*, 129 S.Ct. 2658, 2009 U.S. LEXIS 4945 (2009).

§ 1-521.07. Agency affirmative action plan; number of hires, promotions and terminations during period of plan.

The plan shall further state the number of hires, promotions, and terminations (due to retirement, death, reductions in service or force, lack of performance, disciplinary action, and all other reasons), and indicate the permanent, temporary, or probationary status of the terminated employees of, and personnel grievance and equal employment complaints instituted by, persons known to be members of the various classes specified in § 1-521.05, during the period since the previously submitted plan.

(May 6, 1976, D.C. Law 1-63, § 8, 22 DCR 6540.)

Section references. — This section is referred to in § 1-521.01.

Prior Codifications. — 1981 Ed., § 1-513. 1973 Ed., § 1-320g.

Legislative history of Law 1-63. — For legislative history of D.C. Law 1-63, see Historical and Statutory Notes following § 1-521.01.

§ 1-521.08. Detail by Mayor of nonuniformed equal employment opportunity officers and specialists to Office of Human Rights; limitation; uniformed positions unaffected.

The Mayor shall have the authority and is directed to detail, on a full-time basis, all persons who, on May 6, 1976, are employed, on a full-time basis, as nonuniformed equal employment opportunity officers and equal employment opportunity specialists by any agency of the District government other than the Office of Human Rights, to work in the Office of Human Rights as investigators or in other positions, all directly involved in the decision of equal employment opportunity cases instituted against the District government or any of its agencies. No person so detailed shall work on cases instituted against the agency from which the person is detailed. The Mayor shall assign such details on May 6, 1976. The positions which such persons hold shall be transferred to the budget of the Office of Human Rights in and for Fiscal Year 1977. The Metropolitan Police Department and the Fire Department are not authorized by this section to abolish, leave unfilled, or reduce the authority or duties of any uniformed equal employment opportunity officer or specialist position. This section shall not be construed to affect any uniformed position in the District government.

(May 6, 1976, D.C. Law 1-63, § 9, 22 DCR 6540; Apr. 6, 1977, D.C. Law 1-100, § 2, 23 DCR 8730.)

Section references. — This section is referred to in § 1-521.01.

Prior Codifications. — 1981 Ed., § 1-514. 1973 Ed., § 1-320h.

Legislative history of Law 1-63. — For legislative history of D.C. Law 1-63, see Historical and Statutory Notes following § 1-521.01.

Legislative history of Law 1-100. — Law 1-100 was introduced in Council and assigned

Bill No. 1-310, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on July 20, 1976 and September 15, 1976, respectively. Signed by the Mayor on October 20, 1976, it was assigned Act No. 1-163 and transmitted to both Houses of Congress for its review.

Subchapter III. Mayoral Nominees.

§ 1-523.01. Mayoral nominees.

(a) The Mayor shall nominate persons to serve as subordinate agency heads in the Executive Service established by subchapter X-A of Chapter 6 of this title [§ 1-610.51 et seq.], subject to the advice and consent of the Council, within 180 calendar days of the date of the establishment of the subordinate agency or the date of a vacancy. A nomination shall be submitted to the Council for a 90-day period of review, excluding days of Council recess. If the Council

does not approve or disapprove the nomination by resolution within this 90-day review period, the nomination shall be deemed confirmed.

(1) If the Mayor fails to nominate a person within 180 days of the establishment of the subordinate agency vacancy or the date of vacancy, no District funds may be expended to compensate any person serving in the position.

(2) The Mayor may designate an acting subordinate agency head, but this designation shall not suspend the requirements of this section, or the provisions of § 1-610.59(a).

(b) The Mayor shall not appoint board or commission members to serve in a position that the law requires to be filled by Mayoral appointment with the advice and consent of the Council.

(c) No person shall serve in a hold-over capacity for longer than 180 days after the expiration of the term to which he or she was appointed, in a position that is required by law to be filled by Mayoral appointment with the advice and consent of the Council including to positions on boards and commissions.

(d) The provisions of this section shall not be affected by any provision in subchapter VI of Chapter 3 of this title [§ 1-315.01 et seq.].

(e) Notwithstanding any other provision of law, the Mayor shall transmit to the Council, for a 90-day period of review, excluding days of Council recess, nominations to the boards and commissions listed in this subsection. If the Council does not approve by resolution within the 90-day period a nomination to these boards or commissions, the nomination shall be deemed disapproved.

(1) The Alcoholic Beverage Control Board, established by § 25-104(a);

(2) The District of Columbia Board of Library Trustees, established by § 39-104;

(3) The Board of Trustees of the University of the District of Columbia, established by § 38-1202.01;

(4) The Board of Zoning Adjustment, established by § 6-641.07;

(5) The Police Complaints Board, established by § 5-1104;

(6) The Contract Appeals Board, established by § 2-309.01;

(7) The District of Columbia Board of Elections and Ethics, established by § 1-1001.03;

(8) The Commission on Human Rights, established by § 2-1404.01;

(9) Repealed.

(10) The District of Columbia Housing Finance Agency Board of Directors, established by § 42-2702.02;

(11) The District of Columbia Lottery and Charitable Games Control Board, established by § 3-1301;

(12) Repealed.

(13) The Historic Preservation Review Board, established by Mayor's Order 83-119, issued May 6, 1983 (30 DCR 3031) in accordance with § 6-1103;

(14) The Metropolitan Washington Airports Authority Board of Directors, established by § 9-1006(e);

(15) The National Capital Revitalization Corporation Board, established by § 2-1219.03;

(16) The Office of Employee Appeals, established by § 1-606.01;

- (17) The Public Employee Relations Board, established by § 1-605.01;
 - (18) The Public Service Commission, established by § 34-801;
 - (19) The Rental Housing Commission, established by § 45-2511;
 - (20) The Washington Convention and Sports Authority Board of Directors, established by § 10-1202.05;
 - (21) The Water and Sewer Authority Board of Directors, established by § 34-2202.04;
 - (22) The Zoning Commission for the District of Columbia, established by § 6-621.01;
 - (23) Repealed.
 - (24) The District of Columbia Taxicab Commission, established by § 40-1704;
 - (25) The Redevelopment Land Agency Board of Directors, established by § 6-301.03;
 - (26) The Economic Development Finance Corporation Board of Directors, established by § 2-1207.03;
 - (27) The Board of Commissioners of the District of Columbia Housing Authority, established by § 6-211;
 - (28) The Board of Directors of the Anacostia Waterfront Corporation, established by § 2-1223.05;
 - (29) Homeland Security Commission established by § 7-2271.02; and
 - (30) Commission on Fashion Arts and Events, established by § 3-651.
- (f) Notwithstanding any other provision of law, the Mayor shall transmit to the Council, for a 45-day period of review, excluding days of Council recess, nominations to the boards and commissions listed in this subsection. The Council shall be deemed to have approved a nomination under this subsection if during the 45-day period, no member introduces a resolution disapproving the nomination. If a member introduces a resolution disapproving the nomination within the 45-day period, the Council shall have an additional 45 days, excluding days of Council recess, to disapprove the nomination by resolution, or it will be deemed approved.
- (1) The Apprenticeship Council, established by § 32-1402;
 - (2) The Armory Board, established by § 3-302;
 - (3) Repealed;
 - (4) The Board of Dentistry, established by § 3-1202.01;
 - (5) The Board of Medicine, established by § 3-1202.03;
 - (6) The Board of Nursing, established by § 3-1202.04;
 - (7) The Board of Nursing Home Administration, established by § 3-1202.05;
 - (8) The Board of Psychology, established by § 3-1202.11;
 - (9) Repealed.
 - (10) The Child Support Guideline Commission, established by § 16-916.02;
 - (11) The Commission on the Arts and Humanities, established by § 39-203 note;
 - (12) The District of Columbia Boxing and Wrestling Commission, established by § 3-604;

- (13) The Multistate Tax Commission, established by § 47-441;
- (14) The Public Access Corporation Board of Directors, established by § 34-1253.02;
- (15) The Board of Real Estate, established by § 47-2853.06(h);
- (16) Repealed;
- (17) The Board of Dietetics and Nutrition, established by § 3-1202.02;
- (18) The Board of Occupational Therapy, established by § 3-1202.06;
- (19) The Board of Optometry, established by § 3-1202.07;
- (20) The Board of Pharmacy, established by § 3-1202.08;
- (21) The Board of Physical Therapy, established by § 3-1202.09;
- (22) The Board of Podiatry, established by § 3-1202.10;
- (23) The Board of Social Work, established by § 3-1202.12;
- (24) The Board of Professional Counseling, established by § 3-1202.13;
- (25) The Board of Respiratory Care, established by § 3-1202.14;
- (26) The Board of Massage Therapy, established by § 3-1202.15;
- (27) The Board of Chiropractic, established by § 3-1202.16;
- (28) The Statewide Health Coordinating Council, established by § 44-403;
- (29) The Board of Barber and Cosmetology, established by § 47-2853.06(c);
- (30) The Board of Real Estate Appraisers, established by § 47-2853.06(g);
- (31) Repealed;
- (32) The Board of Funeral Directors, established by § 47-2853.06(f);
- (33) Repealed;
- (34) Repealed;
- (35) The Board of Veterinary Examiners for the District of Columbia, established by § 3-505;
- (36) Reserved;
- (37) The Board of Architecture and Interior Designers, established by § 47-2853.06(a);
- (38) The Board of Accountancy, established by § 47-2853.06(b);
- (39) The Board of Industrial Trades, established by § 47-2853.06(d);
- (40) The Board of Professional Engineering, established by § 47-2853.06(e);
- (41) The Housing and Community Development Reform Commission, established by § 6-1032;
- (42) The Commission on Asian and Pacific Islander Community Development, established by § 2-1373;
- (43) The Board of Marriage and Family Therapy, established by § 3-1202.17;
- (44) The District of Columbia Small and Local Business Opportunity Commission, established by § 2-218.21;
- (45) The Security Officer Advisory Commission;
- (46) The Motor Vehicle Theft Prevention Commission, established by § 3-1352;
- (47) The Commission on African Affairs, established by § 2-1393;
- (48) The Science Advisory Board to the Department of Forensic Sciences, established by § 5-1501.11; and

(49) The Commission on African-American Affairs, established by § 3-1441.

(g) Notwithstanding any other provision of law, the Mayor shall directly appoint members to boards and commissions, without the advice and consent of the Council, to the boards and commissions not contained in subsections (e) and (f) of this section.

(h) This section shall not apply to positions on boards and commissions that are designated by law for the Mayor, his or her designee, or another member of the executive branch or his or her designee.

(Mar. 3, 1979, D.C. Law 2-142, § 2, 25 DCR 6112; Mar. 4, 1981, D.C. Law 3-131, § 802, 28 DCR 326; Mar. 16, 1989, D.C. Law 7-201, § 3, 36 DCR 248; May 10, 1989, D.C. Law 7-231, § 4, 36 DCR 492; Oct. 15, 1993, D.C. Law 10-39, § 2, 40 DCR 5827; Apr. 20, 1999, D.C. Law 12-261, § 1245, 46 DCR 3142; June 12, 1999, D.C. Law 12-285, § 2, 46 DCR 1355; Oct. 20, 1999, D.C. Law 13-38, § 1103, 46 DCR 6373; Oct. 14, 1999, D.C. Law 13-49, §§ 3, 15, 46 DCR 5153; Apr. 12, 2000, D.C. Law 13-91, § 111, 47 DCR 520; May 9, 2000, D.C. Law 13-105, § 28, 47 DCR 1325; June 19, 2001, D.C. Law 13-313, § 3, 48 DCR 1873; July 12, 2001, D.C. Law 14-18, § 9(c), 48 DCR 4047; Oct. 3, 2001, D.C. Law 14-28, § 308, 48 DCR 6981; Oct. 1, 2002, D.C. Law 14-190, § 1148, 49 DCR 6968; Mar. 10, 2004, D.C. Law 15-88, § 3, 50 DCR 10999; Mar. 13, 2004, D.C. Law 15-105, §§ 15, 18, 51 DCR 881; Dec. 7, 2004, D.C. Law 15-216, § 3, 51 DCR 9123; Dec. 7, 2004, D.C. Law 15-219, § 201(b), 51 DCR 9142; Apr. 13, 2005, D.C. Law 15-354, § 2, 52 DCR 2638; Apr. 7, 2006, D.C. Law 16-91, § 116, 52 DCR 10637; Nov. 16, 2006, D.C. Law 16-187, § 221, 53 DCR 6722; Mar. 2, 2007, D.C. Law 16-191, § 115, 53 DCR 6794; Mar. 14, 2007, D.C. Law 16-262, § 409, 54 DCR 794; Feb. 6, 2008, D.C. Law 17-108, § 202, 54 DCR 10993; Apr. 15, 2008, D.C. Law 17-148, § 5, 55 DCR 2219; July 18, 2008, D.C. Law 17-197, § 10(a), 55 DCR 6277; Mar. 25, 2009, D.C. Law 17-353, §§ 127(b), 175, 208, 233, 249, 56 DCR 1117; Mar. 3, 2010, D.C. Law 18-111, § 2082(a), 57 DCR 181; Apr. 8, 2011, D.C. Law 18-363, § 3(a), 58 DCR 963; Aug. 17, 2011, D.C. Law 19-18, § 18, 58 DCR 5403; Mar. 14, 2012, D.C. Law 19-106, § 4, 59 DCR 440.)

Cross references. — Director of the Department of Public Health, appointment, see § 7-153.

Director of the Office of Contracting and Procurement, nomination and confirmation, see § 2-301.05e.

Non-health related occupations and professions licensure boards, nominations and appointments, see § 47-2853.07.

Section references. — This section is referred to in §§ 1-610.51, 2-218.21, 2-1219.03, 2-1223.05, 2-1373, 2-1374, 2-1515.02, 3-1404, 5-1402, 6-1032, 8-151.04, 10-1202.05, 34-1252.01, 38-2601, 39-203, 42-2702.02, 49-1002, 50-802, and 50-921.02.

Prior Codifications. — 1981 Ed., § 1-633.7.

1973 Ed., § 1-362.7.

Effect of amendments. — D.C. Law 13-38, in subsec. (e), in the first sentence of the intro-

ductory paragraph, substituted “paragraphs (1)-(26)” for “paragraphs (1)-(24)”, and added pars. (25) and (26).

D.C. Law 13-49, in par. (20) of subsec. (e), substituted “§ 9-806” for “§ 9-803”; in par. (3) of subsec. (f), substituted “Mayor’s Order 96-27, issued March 5, 1996 (43 DCR 1367)” for “Mayor’s Order 94-115, issued May 9, 1994 (41 DCR 2864)”; validated previously made technical amendments; and repealed pars. (31), (33), and (34) of subsec. (f), which previously read:

“(31) The Board of Chiropractic, established by § 2-3302.16;”

“(33) The Board of Respiratory Care, established by § 2-3302.14;

“(34) The Board of Social Work, established by § 2-3302.12; and”.

D.C. Law 13-91, in subsec. (a), substituted “§ 1-611.51” for “§ 1-611.1”; and in subsec. (f), in par. (15), substituted “The Board of Real

Estate, established by § 47-2853.6(h)" for "The Real Estate Commission of the District of Columbia, established by § 45-1923", in par. (29), substituted "The Board of Barber and Cosmetology, established by § 47-2853.6(c)" for "The Barber and Cosmetology Board, established by § 2-422", in par. (30), substituted "The Board of Real Estate Appraisers, established by § 47-2853.6(g)" for "The Board of Appraisers, established by § 45-3202", in par. (32), substituted "The Board of Funeral Directors, established by § 47-2853.6(f)" for "The Board of Funeral Directors, established by § 2-2803", in par. (35), inserted "for the District of Columbia", and added pars. (37) to (40).

D.C. Law 13-105, in subsec. (e), in the first sentence of the introductory paragraph, substituted "paragraphs (1)-(27)" for "paragraphs (1)-(26)", in par. (25), deleted "and" from the end, in par. (26), added "and", and added par. (27).

D.C. Law 13-313 repealed par. (16) of subsec. (f) which had read:

"(16) The Sex Offender Registration Advisory Council, established by § 22-4103;"

D.C. Law 14-18 repealed par. (9) of subsec. (e) which had read:

"(9) The Health and Hospitals Public Benefit Corporation Board of Directors, established by § 44-1102.03;"

D.C. Law 15-354, in subsec. (e), substituted "in this subsection" for "in paragraphs (1)-(27) of this subsection"; in subsec. (f), substituted "in this subsection" for "in paragraphs (1)-(42) of this subsection", and repealed par. (3) which had read:

"(3) The Board of Appeals and Review, established by Mayor's Order 96-27, issued March 5, 1996 (43 DCR 1367);"

Section 308 of D.C. Law 14-28, in subsec. (f), substituted "(42)" for "(41)" in the introductory paragraph, made nonsubstantive changes to pars. (40) and (41), and added par. (42).

Section 1148 of D.C. Law 14-190, in subsec. (f), made nonsubstantive changes in pars. (39) and (40), and added par. (41).

D.C. Law 15-88, in subsec. (f), made nonsubstantive changes in pars. (41) and (42), and added par. (43).

D.C. Law 15-105, in subsec. (a), substituted "subchapter X-A of Chapter 6 of this title" for "§ 1-610.51"; in par. (14) of subsec. (f), substituted "§ 34-1253.02" for "§ 34-1229"; and, in pars. (40), (41), and (42) of subsec. (f), validated previously made technical corrections.

D.C. Law 15-216 rewrote par. (8) of subsec. (e) which had read:

"(8) The District of Columbia Commission on Human Rights, established by Commission on Human Rights Order, issued July 8, 1971 (C.O. 71-224)."

D.C. Law 15-219, in subsec. (e), substituted "(1)-(28)" for "(1)-(27)" in the lead-in text, deleted "and" following the semicolon in par. (26),

substituted "; and" for a period in par. (27), and added par. (28).

D.C. Law 16-91, in par. (e)(5), substituted "Police Complaints" for "Citizen Complaint Review"; repealed par. (e)(23); and added par. (f)(44).

D.C. Law 16-187, in subsec. (f), deleted "and" from the end of par. (43), substituted "; and" for a period at the end of par. (44), and added par. (45).

D.C. Law 16-191, in pars. (42) and (43) of subsec. (f), validated previously made technical corrections.

D.C. Law 16-262, in subsec. (e), added par. (29).

D.C. Law 17-148, in subsec. (e), added par. (30).

D.C. Law 17-108, in subsec. (a)(2), inserted ", or the provisions of § 1-610.59(a)".

D.C. Law 17-197, in subsec. (f), deleted "and" from the end of par. (44), substituted "; and" for a period at the end of par. (45), and added par. (46).

D.C. Law 17-353, in subsec. (e)(30), substituted "Events, established by § 3-651" for "Events", in subsec. (f), deleted "; and" from the end of par. (45); substituted "; and" for a period at the end of par. (46), and added par. (47), and validated previously made technical corrections in subsecs. (f)(28), (42), (43), (45).

D.C. Law 18-111 repealed subsec. (e)(12); and, in subsec. (e)(20), substituted "Washington Convention and Sports Authority" for "Washington Convention Center Authority". Prior to repeal, subsec. (e)(12) read as follows:

"(12) The District of Columbia Sports Commission Board of Directors, established by § 3-1404;"

D.C. Law 18-363 repealed subsec. (f)(9), which formerly read:

"(9) The Board of Real Property Assessments and Appeals, established by § 47-825.01;"

D.C. Law 19-18, in subsec. (f), added par. (48).

D.C. Law 19-106 added subsec. (f)(49).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Confirmation Holdover Temporary Amendment Act of 1993 (D.C. Law 10-21, September 30, 1993, 41 DCR 7214).

For temporary (225 day) amendment of section, see § 2(b) of Board of Trustees of the University of the District of Columbia Temporary Amendment Act of 1999 (D.C. Law 13-95, April 12, 2000, law notification 47 DCR 2846).

Section 2 of D.C. Law 16-215, in subsec. (f), in par. (43), struck "and" at the end, in par. (44) substituted "; and" for the period, and added par. (45) to read as follows:

"(45) The Commission on African Affairs, established by section 4 of the Office and Commission on African Affairs Act of 2006, effective

June 8, 2006 (D.C. Law 16-111; D.C. Official Code § 2-1393)."

Section 5(b) of D.C. Law 16-215 provided that the act shall expire after 225 days of its having taken effect.

Section 3 of D.C. Law 19-75, in subsec. (b), substituted "; provided, that the Mayor is authorized to make new interim appointments of members serving on the Board of Real Property Assessments and Appeals, established by D.C. Official Code § 47-825.01, as of October 1, 2011, who may continue to serve in that capacity until the Chairperson and Vice-Chairperson for the Real Property Tax Appeals Commission for the District of Columbia have been approved by the Council and appointed by the Mayor in accordance with D.C. Official Code § 47-825.01a(a)(1)(F)." for a period at the end.

Section 8(b) of D.C. Law 19-75 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 2 of the Confirmation Emergency Amendment Act of 1999 (D.C. Act 13-25, March 15, 1999, 46 DCR 2971).

For temporary (90-day) amendment of section, see § 2 of the Confirmation Act Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-92, June 4, 1999, 46 DCR 5330).

For temporary (90-day) amendment of section, see § 1103 of the Service Improvement and Fiscal Year 2000 Budget Support Emergency Act of 1999 (D.C. Act 13-110, July 28, 1999, 46 DCR 6320).

For temporary (90-day) amendment of section, see § 3 of the Board of Trustees of the University of the District of Columbia Emergency Amendment Act of 1999 (D.C. Act 13-210, December 17, 1999, 47 DCR 9).

For temporary (90-day) amendment of section, see § 27 of the District of Columbia Housing Authority Emergency Act of 1999 (D.C. Act 13-259, February 9, 2000, 47 DCR 1129).

For temporary (90-day) amendment of section, see § 3 of the Board of Trustees of the University of the District of Columbia Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-280, March 7, 2000, 47 DCR 2022).

For temporary (90-day) amendment of section, see § 27 of the District of Columbia Housing Authority Congressional Review Emergency Act of 2000 (D.C. Act 13-346, June 5, 2000, 47 DCR 4980).

For temporary (90 day) amendment of section, see § 1148 of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

For temporary (90 day) amendment of section, see § 201(b) of Anacostia Waterfront Corporation Emergency Act of 2004 (D.C. Act 15-586, November 1, 2004, 51 DCR 10681).

For temporary (90 day) amendment of section, see § 2 of Office and Commission on African Affairs Clarification Emergency Amendment Act of 2006 (D.C. Act 16-501, October 23, 2006, 53 DCR 9051).

For temporary (90 day) amendment of section, see § 2 of Office and Commission on African Affairs Clarification Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-5, January 16, 2007, 54 DCR 1448).

For temporary (90 day) amendment of section, see § 2082(a) of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 2082(a) of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

For temporary (90 day) amendment of section, see § 3 of Real Property Tax Appeals Commission Establishment Clarification Emergency Amendment Act of 2011 (D.C. Act 19-169, October 11, 2011, 58 DCR 8905).

For temporary (90 day) amendment of section, see § 3 of Real Property Tax Appeals Commission Establishment Clarification Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-256, December 21, 2011, 58 DCR 11219).

Legislative history of Law 2-142. — Law 2-142 was introduced in Council and assigned Bill No. 2-11, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978 and October 31, 1978, respectively. Vetoed by the Mayor on November 27, 1978, and enacted without signature on December 12, 1978, it was assigned Act No. 2-312 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-201. — For legislative history of D.C. Law 7-201, see Historical and Statutory Notes following § 1-603.01.

Legislative history of Law 7-231. — For legislative history of D.C. Law 7-231, see Historical and Statutory Notes following § 1-611.11.

Legislative history of Law 10-4. — Law 10-4, the "Confirmation Temporary Amendment Act of 1993," was introduced in Council and assigned Bill No. 10-172. The Bill was adopted on first and second readings on March 2, 1993, and April 7, 1993, respectively. Approved without the signature of the Mayor on April 30, 1993, it was assigned Act No. 10-22 and transmitted to both Houses of Congress for its review. D.C. Law 10-4 became effective on June 24, 1993.

Legislative history of Law 10-39. — Law 10-39, the "Confirmation Act of 1993," was introduced in Council and assigned Bill No.

10-148, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on July 30, 1993, it was assigned Act No. 10-74 and transmitted to both Houses of Congress for its review. D.C. Law 10-39 became effective on October 15, 1993.

Legislative history of Law 12-261. — Law 12-261, the “Second Omnibus Regulatory Reform Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-845, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615 and transmitted to both Houses of Congress for its review. D.C. Law 12-261 became effective on April 20, 1999.

For legislative history of D.C. Law 12-(D.C. Act 12-622), see Historical and Statutory Notes following § 1-603.01.

Legislative history of Law 13-38. — For Law 13-38, see notes following § 1-603.01.

Legislative history of Law 13-49. — For Law 13-49, see notes following § 1-616.54.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-602.03.

Legislative history of Law 13-105. — Law 13-105, the “District of Columbia Housing Authority Act of 1999,” was introduced in Council and assigned Bill No. 13-169, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 7, 1999, and December 21, 1999, respectively. Signed by the Mayor on January 18, 2000, it was assigned Act No. 13-254 and transmitted to both Houses of Congress for its review. D.C. Law 13-105 became effective on May 9, 2000.

Legislative history of Law 13-313. — For Law 13-313, see notes following § 1-307.67.

Legislative history of Law 14-18. — Law 14-18, the “Health Care Privatization Amendment Act of 2001,” was approved April 30, 2001 by the District of Columbia Financial Responsibility and Management Assistance Authority pursuant to section 207(c) of Public Law 104-8, and assigned DCFRMA-3. The Act was transmitted to both Houses of Congress by the Authority on May 7, 2001, for its review. The Authority gave notice to the Council by letter dated August 6, 2001 that the 30-day Congressional Review Period expired on July 11, 2001. D.C. Law 14-18 became effective on July 12, 2001.

Legislative history of Law 14-28. — Law 14-28, the “Fiscal Year 2002 Budget Support Act of 2001,” was introduced in Council and assigned Bill No. 14-144, which was referred to the Committee Of the Whole. The Bill was adopted on first and second readings on May 1,

2001, and June 5, 2001, respectively. Signed by the Mayor on June 29, 2001, it was assigned Act No. 14-85 and transmitted to both Houses of Congress for its review. D.C. Law 14-28 became effective on October 3, 2001.

Legislative history of Law 14-190. — For Law 14-190, see notes following § 1-301.131.

Legislative history of Law 15-88. — Law 15-88, the “Marriage and Family Therapy Amendment Act of 2003,” was introduced in Council and assigned Bill No. 15-20, which was referred to Committee on Human Services. The Bill was adopted on first and second readings on October 7, 2003, and November 4, 2003, respectively. Signed by the Mayor on November 25, 2003, it was assigned Act No. 15-256 and transmitted to both Houses of Congress for its review. D.C. Law 15-88 became effective on March 10, 2004.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 1-301.47.

Legislative history of Law 15-216. — Law 15-216, the “Commission on Human Rights Establishment Amendment Act of 2004,” was introduced in Council and assigned Bill No. 15-51, which was referred to the Subcommittee on Human Rights, Latino Affairs and Property. The Bill was adopted on first and second readings on June 29, 2004, and July 13, 2004, respectively. Signed by the Mayor on August 2, 2004, it was assigned Act No. 15-521 and transmitted to both Houses of Congress for its review. D.C. Law 15-216 became effective on December 7, 2004.

Legislative history of Law 15-219. — Law 15-219, the “Anacostia Waterfront Corporation Act of 2004,” was introduced in Council and assigned Bill No. 15-616, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on June 29, 2004, and July 13, 2004, respectively. Signed by the Mayor on August 5, 2004, it was assigned Act No. 15-527 and transmitted to both Houses of Congress for its review. D.C. Law 15-219 became effective on December 7, 2004.

Legislative history of Law 15-354. — Law 15-354, the “Technical Amendments Act of 2004,” was introduced in Council and assigned Bill No. 15-1130 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 7, 2004, and December 21, 2004, respectively. Signed by the Mayor on February 9, 2005, it was assigned Act No. 15-770 and transmitted to both Houses of Congress for its review. D.C. Law 15-354 became effective on April 13, 2005.

Legislative history of Law 16-91. — For Law 16-91, see notes following § 1-301.45.

Legislative history of Law 16-187. — Law 16-187, the “Enhanced Professional Security Amendment Act of 2006,” was introduced in Council and assigned Bill No. 16-102, which

was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 6, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 25, 2006, it was assigned Act No. 16-465 and transmitted to both Houses of Congress for its review. D.C. Law 16-187 became effective on November 16, 2006.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 1-325.44.

Legislative history of Law 16-262. — Law 16-262, the “Homeland Security, Risk Reduction, and Preparedness Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-242, which was referred to Committee on Judiciary. The Bill was adopted on first and second readings on December 5, 2006, and December 19, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-618 and transmitted to both Houses of Congress for its review. D.C. Law 16-262 became effective on March 14, 2007.

Legislative history of Law 17-148. — Law 17-148, the “Commission on Fashion Arts and Events Establishment Act of 2008”, was introduced in Council and assigned Bill No. 17-173 which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on January 8, 2008, and February 5, 2008, respectively. Signed by the Mayor on February 22, 2008, it was assigned Act No. 17-292 and transmitted to both Houses of Congress for its review. D.C. Law 17-148 became effective on April 15, 2008.

Legislative history of Law 17-108. — For Law 17-108, see notes following § 1-209.05.

Legislative history of Law 17-197. — Law 17-197, the “Motor Vehicle Theft Prevention Act of 2008”, was introduced in Council and assigned Bill No. 17-138 which was referred to the Committee on Public Safety and Judiciary. The Bill was adopted on first and second readings on April 1, 2008, and May 6, 2008, respectively. Signed by the Mayor on May 23, 2008, it was assigned Act No. 17-394 and transmitted to

both Houses of Congress for its review. D.C. Law 17-197 became effective on July 18, 2008.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 1-129.05.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 1-301.181.

Legislative history of Law 18-363. — Law 18-363, the “Real Property Tax Appeals Commission Establishment Act of 2010”, was introduced in Council and assigned Bill No. 18-530, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on December 7, 2010, and December 21, 2010, respectively. Signed by the Mayor on January 28, 2011, it was assigned Act No. 18-714 and transmitted to both Houses of Congress for its review. D.C. Law 18-363 became effective on April 8, 2011.

Legislative history of Law 19-18. — Law 19-18, the “Department of Forensic Sciences Establishment Act of 2011”, was introduced in Council and assigned Bill No. 19-5, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 3, 2011, and May 7, 2011, respectively. Signed by the Mayor on June 24, 2011, it was assigned Act No. 19-89 and transmitted to both Houses of Congress for its review. D.C. Law 19-18 became effective on August 17, 2011.

Legislative history of Law 19-106. — Law 19-106, the “Commission on African-American Affairs Establishment Act of 2012”, was introduced in Council and assigned Bill No. 19-213, which was referred to the Committee on Aging and Community Affairs. The Bill was adopted on first and second readings on December 20, 2012, and January 4, 2012, respectively. Signed by the Mayor on January 20, 2012, it was assigned Act No. 19-281 and transmitted to both Houses of Congress for its review. D.C. Law 19-106 became effective on March 14, 2012.

Mayor’s Orders. — Amendment of Organization Order No. 112, establishing Board of Appeals and Review: See Mayor’s Order 84-31, February 9, 1984.

CASE NOTES

In general.

Former mayor of the District of Columbia, in his individual capacity, was absolutely immune from tort liability for wrongful discharge of Director of the District of Columbia (D.C.) Of-

fice of Human Rights (OHR); e decision to fire such an agency head was a matter clearly committed by law to Mayor’s control or supervision. *Holman v. Williams*, 436 F.Supp.2d 68, 2006 U.S. Dist. LEXIS 44805 (2006).

Subchapter IV. Modifications of Board of Education Reduction-In-Force Procedures.

§ 1-525.01. Modifications of Board of Education Reduction-in-Force procedures.

(a) Notwithstanding any other provision of law, rule, or regulation, an employee of the District of Columbia Public Schools shall be:

- (1) Classified as an Educational Service employee;
- (2) Placed under the personnel authority of the Board of Education; and
- (3) Subject to all Board of Education rules.

(b) School-based personnel shall constitute a separate competitive area from nonschool-based personnel who shall not compete with school-based personnel for retention purposes.

(Apr. 26, 1996, 110 Stat. 1321-215, Pub. L. 104-134, § 146; Sept. 9, 1996, 110 Stat. 2372, Pub. L. 104-194, § 139.)

Prior Codifications. — 1981 Ed., § 1-609.2.

§ 2(j) of the Legal Service Establishment Emergency Amendment Act of 1998 (D.C. Act 12-620, January 22, 1999, 46 DCR 1343).

Emergency legislation. — For temporary addition of subchapter IX-A (Reserved), see

Subchapter V. Vesting Under Previous District of Columbia Retirement Program.

§ 1-527.01. Vesting under previous District of Columbia retirement program.

For purposes of vesting pursuant to § 1-626.10(b), creditable service with the District for employees whose participation in the District Defined Contribution Plan ceases as a result of the implementation of the Balanced Budget Act of 1997 shall include:

- (1) continuous service performed by nonjudicial employees of the District of Columbia courts after September 30, 1997; and
- (2) service performed for a successor employer, including the Department of Justice or the District of Columbia Offender Supervision, Defender, and Courts Services Agency established under § 24-133, that provides services previously performed by the District government.

(Oct. 21, 1998, 112 Stat. 2681-532, Pub. L. 105-277, § 802(b).)

Prior Codifications. — 1981 Ed., § 1-627.10a.

Subchapter VI. Spouse Equity.

§ 1-529.01. Application.

This chapter shall apply to any District employee or District retiree who is

covered by the retirement program defined under § 1-702(7), or the retirement program established by §§ 1-626.03 to 1-626.12, or an officer, member, or retiree of the United States Park Police Force, or an officer, member or retiree of the United States Secret Service to whom the District of Columbia Policemen and Firemen's Retirement and Disability Act (D.C. Code § 5-707 et seq.) applies.

(Mar. 16, 1989, D.C. Law 7-214, § 2, 36 DCR 513; Oct. 16, 1992, 106 Stat. 2167, Pub. L. 102-422, § 1(1); June 28, 1994, 108 Stat. 730, Pub. L. 103-268, § 1(a).)

Section references. — This section is referred to in §§ 1-529.03 and 1-529.04.

Prior Codifications. — 1981 Ed., § 1-3001.

Emergency legislation. — Section 5 of D.C. Law 11-218 repealed D.C. Act 11-369.

For temporary repeal of the Police Officers', Fire Fighters', and Teachers' Defined Benefit Pension Program Emergency Establishment Act of 1996 (D.C. Act 11-369, August 21, 1996, 41 DCR 4637), see § 5 of the New Hires Police Officers, Fire Fighters, and Teachers Pension Modification Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-10, March 3, 1997, 44 DCR 1633).

Legislative history of Law 7-214. — Law 7-214, the "District of Columbia Spouse Equity Act of 1988," was introduced in Council and assigned Bill No. 7-389, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988,

respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-289 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-218. — Law 11-218, the "New Hires Police Officers, Fire Fighters, and Teachers Pension Modification Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-316. The Bill was adopted on first and second readings on July 3, 1996, and October 1, 1996, respectively. Signed by the Mayor on October 18, 1996, it was assigned Act No. 11-432 and transmitted to both Houses of Congress for its review. D.C. Law 11-218 became effective on April 9, 1997.

Effective date. — Section 1(b) of Pub. L. 103-268 provided that the amendment made by subsection (a) shall take effect as if included in the enactment of the District of Columbia Spouse Equity Act of 1988.

§ 1-529.02. Definitions.

(a) "Court order" means any judgment, decree, or property settlement issued by or approved by any court of any state, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Native American court in connection with, or incident to, the divorce, annulment of marriage, or legal separation of an employee or retiree.

(b) "Employee" means an individual who performs a function of the District government and who receives compensation for the performance of the services, as provided in § 1-603.01(7) or an officer, member, or retiree of the United States Park Police Force or an officer, member, or retiree of the United States Secret Service to whom the District of Columbia Policemen and Firemen's Retirement and Disability Act (D.C. Code § 5-707 et seq.) applies.

(c) "Qualifying court order" means one that by its terms awards to a former spouse all or a portion of an employee's or retiree's retirement benefits, a payment from an employee's or retiree's retirement benefits, or a survivor annuity. The court order must state the former spouse's share as a fixed amount, or a percentage or a fraction of the annuity, and shall indicate whether the former spouse should receive the amount awarded directly from the District. For purposes of awarding a survivor annuity, the court order must

also either state the former spouse's entitlement to a survivor annuity or direct the employee or retiree to provide a survivor annuity.

(Mar. 16, 1989, D.C. Law 7-214, § 3, 36 DCR 513; Oct. 16, 1992, 106 Stat. 2167, Pub. L. 102-422, § 1(2), (3).)

Prior Codifications. — 1981 Ed., § 1-3002.

Legislative history of Law 7-214. — For legislative history of D.C. Law 7-214, see Historical and Statutory Notes following § 1-529.01.

Editor's notes. — Law 17-358 amended this section subject to congressional enactment.

§ 1-529.03. Compliance with court orders.

(a) For purposes of this section, "former spouse" means a living person whose marriage to an employee or retiree has been subject to a divorce, annulment, or legal separation resulting in a court order, except that with respect to an award of a survivor annuity, it additionally means a living person:

(1) Who was married for at least 9 months to an employee or retiree who performed at least 18 months creditable service in a position covered by 1 or more of the retirement systems in § 1-529.01; and

(2) Whose marriage to the employee or retiree was terminated prior to the death of the employee or retiree.

(b) The Mayor shall comply with any qualifying court order that is issued prior to the employee's retirement. Any qualifying court order that awards the entire amount the retirement system is responsible for with respect to that employee bars recovery by any other person.

(c) The Mayor shall comply with any qualifying court order that is issued after the employee's retirement only to the extent it is consistent with any election previously executed at the time of retirement by the employee regarding that former spouse. Any qualifying court order that awards the entire amount the retirement system is responsible for with respect to that employee bars recovery by any other person.

(d) The Mayor is not obligated to comply with qualifying court orders issued prior to March 16, 1989.

(e)(1) Any reduction in an employee's annuity, made pursuant to the relevant retirement system in order to provide for a survivor annuity awarded by court order, shall cease upon remarriage of the former spouse if the remarriage occurs before age 55.

(2) Payment of a survivor annuity to a former spouse pursuant to a court order shall cease upon the remarriage of the former spouse if the remarriage occurs before age 55.

(Mar. 16, 1989, D.C. Law 7-214, § 4, 36 DCR 513.)

Prior Codifications. — 1981 Ed., § 1-3003.

Legislative history of Law 7-214. — For legislative history of D.C. Law 7-214, see Historical and Statutory Notes following § 1-529.01.

Editor's notes. — Law 17-358 amended this section subject to congressional enactment.

CASE NOTES

In general.

Spouse Equity Act, under which District was required to award retirement benefits to former spouses in compliance with qualifying court orders, does not apply to former spouses of government employees whose divorce decrees were entered before effective date of Act. D.C. Code 1981, § 1-3003(d). *District of Columbia v. Gallagher*, 734 A.2d 1087, 1999 D.C. App. LEXIS 157 (1999).

Under Spouse Equity Act, under which District was required to award retirement benefits to former spouses in compliance with qualifying court orders, mayor was prohibited from awarding survivor annuities to spouses of government employees in compliance with pre-Act divorce decrees. D.C. Code 1981, § 1-3003(d). *District of Columbia v. Gallagher*, 734 A.2d 1087, 1999 D.C. App. LEXIS 157 (1999).

§ 1-529.04. Enrollment in health benefits plan.

(a) For purposes of this section, “former spouse” means a living person:

(1) Who was married for at least 9 months to an employee or retiree who performed at least 18 months creditable service in a position covered by 1 or more of the retirement systems referred to in § 1-529.01;

(2) Whose marriage to the employee or retiree was terminated prior to the death of the employee or retiree;

(3) Who was enrolled as a family member in a health benefits plan approved under the Federal Health Benefits Program or in a plan approved under §§ 1-621.05 through 1-621.13 at any time during the 18-month period before the dissolution of the marriage by divorce, annulment, or legal separation; and

(4) Who is receiving any portion of an annuity or survivor’s annuity or is entitled to receive an annuity or survivor’s annuity pursuant to an election by the employee at the time of retirement, a qualifying court order, or the provisions of the retirement system.

(b) Any former spouse of an employee or of a retiree may enroll in a health benefits plan approved under the Federal Employee Health Benefits Program or in a plan approved under §§ 1-621.05 through 1-621.13.

(c) Any former spouse who enrolls in a health benefits plan pursuant to subsection (b) of this section may elect to enroll either as an individual or for self and family, subject to an agreement by the former spouse to pay the full subscription charge of the enrollment, including any amount set aside for the administration of the health benefits plan and any necessary reserves as determined by the Mayor.

(d) Only former spouses whose marriages were dissolved after March 16, 1989 through divorce, annulment, or legal separation shall be eligible to enroll in the health benefits plans.

(Mar. 16, 1989, D.C. Law 7-214, § 6, 36 DCR 513.)

Prior Codifications. — 1981 Ed., § 1-3004.

Legislative history of Law 7-214. — For legislative history of D.C. Law 7-214, see Historical and Statutory Notes following § 1-529.01.

Editor’s notes. — Law 17-358 amended this section subject to congressional enactment.

§ 1-529.05. Rules.

The Mayor shall, pursuant to subchapter I of Chapter 5 of Title 2, issue proposed rules to implement the provisions of this chapter. The proposed rules shall be submitted to the Council of the District of Columbia ("Council") for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved. Nothing in this section shall affect any requirements imposed upon the Mayor by subchapter I of Chapter 5 of Title 2.

(Mar. 16, 1989, D.C. Law 7-214, § 7, 36 DCR 513.)

Prior Codifications. — 1981 Ed., § 1-3005.

Emergency legislation. — For temporary (90 day) addition of §§ 1-531.01 and 1-531.02, see § 3702 of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

Legislative history of Law 7-214. — For legislative history of D.C. Law 7-214, see Historical and Statutory Notes following § 1-529.01.

Subchapter VII. Office of Labor Relations and Collective Bargaining.

§ 1-531.01. Reimbursement for representation by Office of Labor Relations and Collective Bargaining.

(a) Any agency that is represented by the Office of Labor Relations and Collective Bargaining ("OLRCB") in third-party cases, grievances, and dispute resolution shall pay the cost of representation established through an intradistrict agreement with the OLRCB.

(b) Beginning in Fiscal Year 2003, the OLRCB shall calculate and assess the costs for representing agencies under the direct personnel authority of the Mayor in third-party cases, grievances, and dispute resolution. The OLRCB shall negotiate the cost of representing an independent agency in third-party cases, grievances, and dispute resolution with the independent agency.

(Oct. 1, 2002, D.C. Law 14-190, § 3802, 49 DCR 6968.)

Legislative history of Law 14-190. — Law 14-190, the "Fiscal Year 2003 Budget Support Act of 2002", was introduced in Council and assigned Bill No. 14-609, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 7,

2002, and June 4, 2002, respectively. Signed by the Mayor on July 3, 2002, it was assigned Act No. 14-403 and transmitted to both Houses of Congress for its review. D.C. Law 14-190 became effective on October 1, 2002.

§ 1-531.02. Budget for Office of Labor Relations and Collective Bargaining.

Beginning with the proposed budget for Fiscal Year 2004, the Mayor shall provide in the budget funding for the Office of Labor Relations and Collective Bargaining ("OLRCB") represented as a separate line or responsibility center.

The Mayor shall include in the budget request submitted to the Council historical spending information for the OLRCB so that an accurate, complete comparison can be made of the fiscal costs for the OLRCB.

(Oct. 1, 2002, D.C. Law 14-190, § 3803, 49 DCR 6968.)

Cross references. — Administration, “employee” defined, see § 2-223.01.

D.C. Housing Authority, executive director, duties, see § 6-255.

Department of Corrections, employees, mandatory drug and alcohol testing, grounds for termination, see §§ 24-211.23 and 24-211.24.

Department of public health, director, see § 7-153.

Education Licensure Commission, personnel, appointment and compensation, see § 38-1305.

Election campaigns, conflict of interest, disclosure, see § 1-1106.02.

Equal opportunity employment, veterans’ preference, see § 1-607.03.

Health occupation boards, compensation of staff set by Mayor, see § 3-1204.07.

Licensure, non-health related occupations and professions, compensation of boards’ support personnel, see § 47-2853.10.

Management supervisory service, composition, see § 1-609.52.

Merit system, educational employees, coverage, see § 1-602.03.

Merit system, effective date provisions, see § 1-636.02.

Merit system, equal employment opportunity, physically handicapped and developmentally disabled persons, see § 1-607.02.

Merit system, personnel system, transition, rights and benefits, see § 1-602.04.

Office of Police Complaints, executive director, duties, application of this chapter, see § 5-1106.

Public libraries, board of trustees, selection and appointment of professional librarian, see § 39-105.

Public Parking Authority, Board of Directors, compensation, see § 50-2504.

Sports and Entertainment Commission, employees not District employees, exempted from coverage, see § 3-1417.

University of the District of Columbia, Board of Trustees, powers and duties, selecting CEO and staff, approving academic and legal counsel appointments, see § 38-1202.06.

Legislative history of Law 14-190. — For Law 14-190, see notes following § 1-531.01.

GOVERNMENT ORGANIZATION

CHAPTER 6. MERIT PERSONNEL SYSTEM.

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- 1-602.02. Limited application of chapter.
- 1-602.03. Educational employees of the District of Columbia Board of Education and the Board of Trustees of the University of the District of Columbia.
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Subchapter I. Findings; Purpose.

§ 1-601.01. Findings.

The Council of the District of Columbia finds that:

(1) The provisions of § 1-204.22(3) require that the Council of the District of Columbia adopt a comprehensive merit system of personnel management for the government of the District of Columbia before January 2, 1980.

(2) The provisions of §§ 1-202.01(f), 1-202.04(g), 1-204.22(3), 1-207.13(c) and (d), and 1-207.14(c), guarantee certain benefits to incumbent employees of the District of Columbia government and those persons transferred to the District of Columbia government from the formerly independent National Capital Housing Authority, District of Columbia Redevelopment Land Agency and the District of Columbia Department of Manpower including, without limitation, benefits relating to appointments, promotions, discipline, separation, pay, unemployment compensation, health, disability and death benefits, leave, retirement, insurance, and veterans preference.

(3) The present authority for filling positions within the District of Columbia government is fragmented, both between the United States Civil Service Commission and the District of Columbia government, and among various subdivisions of the District government, such as, the District of Columbia Board of Education, the Trustees of the University of the District of Columbia and other independent boards and commissions.

(Mar. 3, 1979, D.C. Law 2-139, § 102, 25 DCR 5740.)

Cross references. — Board of elections and ethics, control over board, see § 1-1001.06.

Water and sewer authority, merit personnel system inapplicable, see § 34-2202.15.

Water and sewer authority, transition provisions, see § 34-2202.17.

Section references. — This section is referred to in § 1-607.03.

Prior Codifications. — 1981 Ed., § 1-601.1.

1973 Ed., § 1-331.1.

Legislative history of Law 2-139. — Law 2-139 was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978 and October 31, 1978, respectively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

Delegation of Authority. — Director of Personnel and Chief of Police, see Mayor's Order 99-79, May 13, 1999 (46 DCR 5436).

Editor's notes. — Pub. L. 106-113, Div. A, Title I, § 120, Nov. 29, 1999, 113 Stat. 1515, and Pub. L. 107-96, § 111(a), Dec. 21, 2001, 115 Stat. 948, provided: "Notwithstanding any other provisions of law, the provisions of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (D.C. Law 2-139; D.C. Code, sec. 1-601.1 et seq.), enacted pursuant to section 422(3) of the District of Columbia Home Rule Act (87 Stat. 790; Public Law 93-198; D.C. Code, sec. 1-242(3)), shall apply with respect to the compensation of District of Columbia employees: Provided, That for pay purposes, employees of the District of Columbia government shall not be subject to the provisions of title 5, United States Code." Two Percent (2%) Mid-Year Adjustment of Pay Rates for Career & Excepted Service Employees of the D.C. Within the Scope of Collective Bargaining Represented by Compensation Units 1 (DS), 2 (WG) and 14 (LPNs): See Mayor's Order 90-70, May 7, 1990.

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Arbitrators.

Neither neutral arbitrator appointed for interest arbitration under the District of Columbia Comprehensive Merit Personnel Act nor the arbitration panel itself is a suable entity. D.C. Code 1981, § 1-601.1 et seq. Council of School Officers v. Vaughn, 553 A.2d 1222, 1989 D.C. App. LEXIS 14 (1989).

Action by labor organization challenging results of interest arbitration under the Comprehensive Merit Personnel Act was improperly brought against neutral arbitrator and chairman of the Public Employee Relations Board. D.C. Code 1981, § 1-601.1 et seq. Council of School Officers v. Vaughn, 553 A.2d 1222, 1989 D.C. App. LEXIS 14 (1989).

Attorney fees.

Entitlement to attorney fees, available under former federal civil service scheme, survived for District of Columbia employee who successfully litigated personnel action and who was hired before District superseded those portions of federal scheme in Comprehensive Merit Personnel Act. D.C. Code 1981, §§ 1-201 et seq., 1-601.1 et seq. District of Columbia v. Hunt, 520 A.2d 300, 1987 D.C. App. LEXIS 275 (1987).

Civil rights.

Regulations pertaining to Comprehensive Merit Personnel Act (CMPA) expressly exclude from the employee grievance procedures any allegations within jurisdiction of District of Columbia Office of Human Rights, and as a result, District employee seeking relief for discrimination must pursue remedies provided under the Human Rights Act, rather than the CMPA. D.C. Code 1981, §§ 1-601.1 et seq., 1-2501 to 1-2557. Robinson v. District of Columbia, 748 A.2d 409, 2000 D.C. App. LEXIS 73 (2000).

Authority for courts in District of Columbia to hear common law tort claims along with discrimination claims of District employees under Kidd exception to exclusivity provision of Comprehensive Merit Personnel Act (CMPA) for common law claims that are premised on, and related to, sexual harassment claim mirrors federal courts' exercise of pendent jurisdiction over state claims, and thus, where tort claim for intentional infliction of emotional distress is premised upon claim of sex discrimination, court has jurisdiction to hear both claims. D.C. Code 1981, § 1-601.1 et seq. Robinson v. District of Columbia, 748 A.2d 409, 2000 D.C. App. LEXIS 73 (2000).

Class actions.

In suit by District of Columbia employees claiming that District of Columbia Comprehensive Merit Personnel Act (CMPA), as applied, violated Fifth Amendment due process, class

action continued to be maintainable on ground that party opposing class had acted or refused to act on grounds generally applicable to class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to class as whole; remaining claim, as properly framed, alleged that as matter of policy and practice, application of the CMPA did not afford class members adequate and timely notice and opportunity to be heard prior to modification, suspension, or termination of their benefits. Lightfoot v. District of Columbia, 246 F.R.D. 326, 2007 U.S. Dist. LEXIS 84286 (2007).

Adequacy of representation requirement for class certification continued to be met in suit by District of Columbia employees claiming that District of Columbia Comprehensive Merit Personnel Act (CMPA), as applied, violated Fifth Amendment due process; review of plaintiffs' briefing provided clear indication they were represented by able counsel and did not have conflict of interest with absentee members of class. Lightfoot v. District of Columbia, 246 F.R.D. 326, 2007 U.S. Dist. LEXIS 84286 (2007).

Typicality requirement for class certification continued to be met in suit by District of Columbia employees claiming that District of Columbia Comprehensive Merit Personnel Act (CMPA), as applied, violated Fifth Amendment due process, even though three named plaintiffs had not suffered injuries in same general fashion as absent class members and would be decertified; two other named plaintiffs asserted claims that arose out of same course of events that led to claims of absent class members and all class members, including those plaintiffs, made the same legal arguments to prove District's liability. Lightfoot v. District of Columbia, 246 F.R.D. 326, 2007 U.S. Dist. LEXIS 84286 (2007).

Commonality requirement for class certification continued to be met in suit by District of Columbia employees claiming that District of Columbia Comprehensive Merit Personnel Act (CMPA), as applied, violated Fifth Amendment due process, despite District's contention that "as applied" theory of case required case-by-case review to determine whether individual was denied pre-deprivation procedural due process and/or whether post-deprivation procedural due process rendered that individual's claim moot. Lightfoot v. District of Columbia, 246 F.R.D. 326, 2007 U.S. Dist. LEXIS 84286 (2007).

Numerosity requirement for class certification continued to be met in suit by District of Columbia employees claiming that District of Columbia Comprehensive Merit Personnel Act (CMPA), as applied, violated Fifth Amendment due process; District's prior class lists included

either 5,052 or 568 members, its suggestion that only a handful of class members were actually denied due process “put the cart before the horse,” and its suggestion that certain categories of beneficiaries were not deprived due process and had to be excluded from class at outset also involved merits-based legal determination that was inappropriate at certification stage. *Lightfoot v. District of Columbia*, 246 F.R.D. 326, 2007 U.S. Dist. LEXIS 84286 (2007).

Construction and application.

Allegations by principals and assistant principals that they tried to exhaust their administrative remedies for breach of contract claims against District of Columbia, mayor, and chancellor of District of Columbia Public Schools (DCPS) by raising grievances through their collective bargaining unit and proceeding to the Office of Employee Appeals were sufficient to plead they pursued remedies provided under the Comprehensive Merit Personnel Act (CMPA), such that amendment of their complaint against defendants to include breach of contract claim was not futile. *Dickerson v. District of Columbia*, 806 F.Supp.2d 116, 2011 U.S. Dist. LEXIS 94449 (2011).

District of Columbia Comprehensive Merit Protection Act (CMPA) establishes a merit personnel system that, among other things, provides for employee discipline through adverse action proceedings, prompt handling of employee grievances, and disability compensation for District employees. *McManus v. District of Columbia*, 530 F.Supp.2d 46, 2007 U.S. Dist. LEXIS 94797 (2007).

Court appointed receiver for District of Columbia agency had implemented his own personnel rules before permanent employee was formally terminated, and, thus, Comprehensive Merit Personnel Act (CMPA) did not apply to employee's termination, despite employee's claim that she was effectively terminated when receiver hired another employee to perform her duties, where court order provided that CMPA would be in effect only until receiver instituted personnel policies and employee continued working until date of her formal termination. *Murray v. Gilmore*, 231 F.Supp.2d 82, 2002 U.S. Dist. LEXIS 25651 (2002).

District of Columbia Comprehensive Merit Personnel Act (CMPA) does not apply to public defender service (PDS) or its employees. *Chase v. Public Defender Serv.*, 956 A.2d 67, 2008 D.C. App. LEXIS 394 (2008).

Impact of National Capital Revitalization and Self-Government Improvement Act and District of Columbia Courts and Justice Technical Corrections Act on Court of Appeals' Saint-Preux decision, which upheld as reasonable the interpretation of Office of Employee Appeals (OEA) that District of Columbia Com-

prehensive Merit Personnel Act (CMPA) covered public defender service (PDS) non-attorney employees and current application of CMPA to PDS were questions of statutory construction that Court of Appeals would review de novo in former employee's action that sought judicial review of OEA's dismissal of appeal of termination from PDS. *Chase v. Public Defender Serv.*, 956 A.2d 67, 2008 D.C. App. LEXIS 394 (2008).

Supervisor's appeal from trial court's decision dismissing his Comprehensive Merit Personnel Act (CMPA) claim against District of Columbia was rendered partially moot by the fact that supervisor voluntarily retired after he filed his lawsuit; supervisor's retirement from District of Columbia Office of the Corporation Counsel mooted his request for an order of reinstatement after he was placed on paid administrative leave pending internal investigation into allegations that he had sexually harassed a subordinate, but supervisor's retirement did not necessarily moot his requests for other relief, such as monetary compensation for the injury to his reputation allegedly caused by his placement on administrative leave. *Grant v. District of Columbia*, 908 A.2d 1173, 2006 D.C. App. LEXIS 543 (2006).

Court must be especially mindful, in interpreting Comprehensive Merit Personnel Act as a whole, that each provision should be construed so as to give effect to all of the statute's provisions, not rendering any provision superfluous. D.C. Code 1981, § 1-601 et seq. *Council of District of Columbia v. Clay*, 683 A.2d 1385, 1996 D.C. App. LEXIS 229 (1996), writ of certiorari denied by 520 U.S. 1169, 117 S. Ct. 1434, 137 L. Ed. 2d 542, 1997 U.S. LEXIS 2277, 65 U.S.L.W. 3692 (1997).

Construction with other laws.

Under the District of Columbia Home Rule Act, employees of Department of Labor became employees of the District of Columbia Department of Employment Services and had no entitlement to federal civil service benefits. *District of Columbia Self-Government and Governmental Reorganization Act*, §§ 204, 204(g), 713(d), 87 Stat. 774. *Thomas v. Barry*, 729 F.2d 1469, 1984 U.S. App. LEXIS 24933 (C.A.D.C. 1984).

Meritless district court filings of District of Columbia employees' claims against District of Columbia, labor unions, insurance companies, and others did not rise to the level of sanctionable conduct under Rule 11, even though various claims for review of terminations and denials of workers' compensation claims were preempted by the District of Columbia Comprehensive Merit Protection Act (CMPA), where existing law did not appear to preclude employees from filing constitutional due process claims in district court and asking the court to exercise supplemental jurisdiction

over their remaining claims. *McManus v. District of Columbia*, 530 F.Supp.2d 46, 2007 U.S. Dist. LEXIS 94797 (2007).

District of Columbia Water and Sewer Authority (WASA), by adopting its own personnel regulations including comprehensive provisions governing employee compensation, exempted itself from compensation provisions of the Comprehensive Merit Personnel Act (CMPA), including entitlement to attorney fees under the Federal Back Pay Act (FBPA), and thus former WASA employee was not entitled to attorney fees pursuant to FBPA in breach of contract action arising from his discharge from employment. *White v. District of Columbia Water & Sewer Auth.*, 962 A.2d 258, 2008 D.C. App. LEXIS 485 (2008).

Though the District of Columbia Board of Education is an independent agency, the Board is still one of the subdivisions of the District government, for purposes of prohibition against strikes by public employees contained in the Comprehensive Merit Personnel Act (CMPA). *Feaster v. Vance*, 832 A.2d 1277, 2003 D.C. App. LEXIS 566 (2003).

Civilian Complaint Review Board (CCRB) Act did not supersede in all respects those provisions of Comprehensive Merit Personnel Act (CMPA) relating to disciplinary proceedings within agency. D.C. Code 1981, §§ 1-601.1 to 1-637.2, 4-901 to 4-911. *District of Columbia Metro. Police Dep't v. Perry*, 638 A.2d 1138, 1994 D.C. App. LEXIS 32 (1994).

The authority of the Educational Institution Licensure Commission to appoint, and hence to promote, its personnel did not survive the passage of the Comprehensive Merit Personnel Act; under the Act, the mayor is the personnel authority for the Commission. D.C. Code 1981, §§ 1-601.1(3), 1-601.2(a)(2), 1-602.1, 1-603.1(14), 1-604.6(a, b), 1-633.5(b), 31-1601 et seq., 31-1605(b). *Sims v. District of Columbia*, 531 A.2d 648, 1987 D.C. App. LEXIS 443 (1987).

A pay comparability process or mechanism is not one of the personnel "benefits" that, under the Comprehensive Merit Personnel Act, must remain at least equal to those provided by previously applicable federal personnel legislation. D.C. Code 1981, §§ 1-162(3), 1-242(3), 1-601.1 et seq., 1-612.4(a), 1-612.5(d, e), 1-612.11(d, i). *American Federation of Government Employees v. Barry*, 459 A.2d 1045, 1983 D.C. App. LEXIS 343 (1983).

Exclusivity of remedy.

Discharged school teacher's failure to respond to defendant's arguments on motion to dismiss that District of Columbia Comprehensive Merit Personnel Act (CMPA) provided exclusive remedy for any claim regarding retirement benefits, and that teacher failed to comply with mandatory notice requirements of CMPA

prior to seeking damages for loss of retirement benefits, amounted to concession in action alleging defendant violated ADEA by terminating her employment as special education teacher with District of Columbia Public Schools (DCPS) on the basis of her age, where teacher's opposition failed to address either of District's arguments. *Kone v. District of Columbia*, 808 F.Supp.2d 80, 2011 U.S. Dist. LEXIS 97660 (2011).

With few exceptions, the Comprehensive Merit Personnel Act (CMPA) is the exclusive remedy for a District of Columbia public employee who has a work-related complaint of any kind; the CMPA creates a mechanism for addressing virtually every conceivable personnel issue among the District, its employees, and their unions, with a reviewing role for the courts as a last resort, not a supplementary role for the courts as an alternative forum. *Osekre v. Gage*, 698 F.Supp.2d 209, 2010 U.S. Dist. LEXIS 30252 (2010).

With few exceptions, the District of Columbia Comprehensive Merit Protection Act (CMPA) is the exclusive remedy for a District of Columbia public employee who has a work-related complaint of any kind. *Scott v. District of Columbia*, 598 F.Supp.2d 30, 2009 U.S. Dist. LEXIS 13030 (2009).

District of Columbia Comprehensive Merit Protection Act (CMPA) provided exclusive avenue for District employees' complaint that District failed to maintain and protect performance-based merit system and Labor-Management relations systems. *McManus v. District of Columbia*, 530 F.Supp.2d 46, 2007 U.S. Dist. LEXIS 94797 (2007).

When a claim is cognizable under the Comprehensive Merit Personnel Act (CMPA), that statute provides the complainant with his or her exclusive remedy, and suits in tort are generally preempted. *White v. District of Columbia*, 852 A.2d 922, 2004 D.C. App. LEXIS 309 (2004).

With few exceptions, the Comprehensive Merit Personnel Act (CMPA) is the exclusive remedy for a District of Columbia public employee who has a work-related complaint of any kind. *Baker v. District of Columbia*, 785 A.2d 696, 2001 D.C. App. LEXIS 247 (2001).

With few exceptions, Comprehensive Merit Personnel Act (CMPA) is the exclusive remedy for District of Columbia public employee who has work-related complaint of any kind. D.C. Code 1981, § 1-601.1 et seq. *Robinson v. District of Columbia*, 748 A.2d 409, 2000 D.C. App. LEXIS 73 (2000).

District of Columbia government employees only lose common law rights of recovery if Comprehensive Merit Personnel Act (CMPA) provides redress for the wrongs they assert. D.C. Code 1981, § 1-601.1 et seq. *Robinson v.*

District of Columbia, 748 A.2d 409, 2000 D.C. App. LEXIS 73 (2000).

District of Columbia public employees do not lose their common law rights to sue for their injuries when neither those injuries nor their consequences trigger exclusive provisions of the Comprehensive Merit Personnel Act (CMPA). D.C. Code 1981, § 1-601.1 et seq. *Robinson v. District of Columbia*, 748 A.2d 409, 2000 D.C. App. LEXIS 73 (2000).

Kidd exception to exclusivity provision of Comprehensive Merit Personnel Act (CMPA) for common law claims that are premised on, and related to, sexual harassment claim was not applicable to employee's tort claims against District of Columbia, seeking relief based on his grievances with District's handling of co-employee's sexual harassment allegations and publicity given to them; there was no primary claim of sexual harassment to which employee's claims could be deemed pendent. D.C. Code 1981, § 1-601.1 et seq. *Robinson v. District of Columbia*, 748 A.2d 409, 2000 D.C. App. LEXIS 73 (2000).

Exhaustion of administrative remedies.

Claim of department chairpersons that University of the District of Columbia breached their employment contracts when it discontinued summer employment for chairpersons was barred by failure of chairpersons to exhaust administrative remedies under the District of Columbia Comprehensive Merit Personnel Act and the University's grievance procedures, notwithstanding claim that pursuance of administrative remedies would have been futile; allegations that deans would not, or could not, reconsider summer contract decision and that appeal to University Provost, the person who announced the decision, would be futile, fell short of demonstrating that University's grievance procedures would have been clearly useless. D.C. Code 1981, § 1-601.1 et seq. *UDC Chairs Chapter, Am. Ass'n of Univ. Professors v. Board of Trustees*, 56 F.3d 1469, 1995 U.S. App. LEXIS 15101 (C.A.D.C. 1995).

Former District of Columbia Metropolitan Police Department (MPD) employee's defamation claims pertaining to statements made in relation to her termination were subject to District of Columbia Comprehensive Merit Personnel Act's (CMPA) exhaustion requirement. *Owens v. District of Columbia*, 631 F.Supp.2d 48, 2009 U.S. Dist. LEXIS 58013 (2009).

When tort claims are predicated upon conduct that may be a proper subject of a grievance under the District of Columbia Comprehensive Merit Protection Act (CMPA), the CMPA precludes litigation until administrative remedies are exhausted. *Scott v. District of Columbia*, 598 F.Supp.2d 30, 2009 U.S. Dist. LEXIS 13030 (2009).

District of Columbia police officer failed to exhaust administrative remedies under the District of Columbia Comprehensive Merit Protection Act (CMPA), as required to bring action against District of Columbia asserting claims for breach of contract, negligence, and intentional infliction of emotional distress arising from his allegedly erroneous placement on leave without pay; officer was subject to the CMPA, and his claim concerning the erroneous reporting of his time records was a work-related grievance that fell under the CMPA. *Scott v. District of Columbia*, 598 F.Supp.2d 30, 2009 U.S. Dist. LEXIS 13030 (2009).

Only once the exclusive remedies of Comprehensive Merit Personnel Act (CMPA) have been exhausted, can a District of Columbia employee bring an action against the District of Columbia as a last resort. *Howerton v. Ogletree*, 466 F.Supp.2d 182, 2006 U.S. Dist. LEXIS 91655 (2006).

Even had terminated employee, who alleged that former employer, Chairman of the Board of Trustees of the University of the District of Columbia, wrongfully terminated her, established subject matter jurisdiction by either federal question or diversity jurisdiction, her claims would be dismissed, given employee's failure to exhaust administrative remedies pursuant to District of Columbia's Comprehensive Merit Personnel Act (CMPA). *Howerton v. Ogletree*, 466 F.Supp.2d 182, 2006 U.S. Dist. LEXIS 91655 (2006).

Terminated District of Columbia correctional officer, alleging that her termination violated due process, could not invoke estoppel doctrine to avoid exhaustion of administrative remedies requirement under District of Columbia Comprehensive Merit Personnel Act (CMPA), despite officer's contention that District refused to arbitrate her claims; District, while disputing validity of arbitration provision of collective bargaining agreement, had not stated definitively that it was not bound by such provision. *Johnson v. District of Columbia*, 368 F.Supp.2d 30, 2005 U.S. Dist. LEXIS 4310 (2005).

Under District of Columbia law, issue of whether defamation and emotional distress claims filed by terminated District of Columbia correctional officer were covered by District of Columbia Comprehensive Merit Personnel Act (CMPA), as would require exhaustion of administrative remedies before bringing suit in court, had to be presented to appropriate District of Columbia agency, in this case, office of employee appeals of department of human services. *Johnson v. District of Columbia*, 368 F.Supp.2d 30, 2005 U.S. Dist. LEXIS 4310 (2005).

Under District of Columbia law, failure by terminated District of Columbia correctional officer to exhaust her administrative remedies, as required by the District of Columbia Com-

prehensive Merit Personnel Act (CMPA), precluded her claim alleging that termination violated her procedural due process rights; officer's claims were predicated on failure of various District of Columbia administrators to adhere to CMPA's requirements for disciplinary actions and employee grievance resolution, and CMPA was exclusive remedy for such work related complaints. *Johnson v. District of Columbia*, 368 F.Supp.2d 30, 2005 U.S. Dist. LEXIS 4310 (2005).

Employee was not precluded from bringing Title VII action in federal court against municipality employer though acts which employee alleged violated Title VII occurred more than 180 days before she filed her administrative action with Equal Employment Opportunity Commission, in that timely filing with administrative agency was not jurisdictional prerequisite to suit in federal court. *Civil Rights Act of 1964*, § 701 et seq., 42 U.S.C. § 2000e et seq. *Harris v. District of Columbia*, 652 F. Supp. 154, 1986 U.S. Dist. LEXIS 18701 (1986).

Public school teacher was not misled into retiring, rather than appealing the reduction in force (RIF), by the phone call from the personnel office telling him that, if he did not complete retirement forms, he might not receive a pension as great as he was eligible to receive if he retired at that time; there was nothing in record to suggest that this phone conversation misrepresented facts regarding teacher's option to retire, teacher could have chosen to challenge RIF instead of retiring, and although notice of RIF and the phone message might have presented difficult situation, record did not establish that they could be interpreted to mislead teacher. *Bagenstose v. D.C. Office of Empl. Appeals*, 888 A.2d 1155, 2005 D.C. App. LEXIS 639 (2005).

Mayor was not entitled to dismissal of plaintiff's suit based on absolute immunity from liability for defamation on appeal from order dismissing suit that was based solely on plaintiff's failure to exhaust administrative remedies under Comprehensive Merit Personnel Act. *Jones v. Williams*, 861 A.2d 1269, 2004 D.C. App. LEXIS 620 (2004), amended by, remanded by 890 A.2d 178, 2005 D.C. App. LEXIS 208 (D.C. 2005), remanded sub nomine *District of Columbia v. Jones*, 919 A.2d 604, 2007 D.C. App. LEXIS 151 (D.C. 2007).

Plaintiff did not waive challenge on appeal to dismissal of his complaint against mayor based on plaintiff's failure to exhaust administrative remedy under Comprehensive Merit Personnel Act by failing to recognize that Act did not apply to plaintiff, where mayor relied on Act as basis for his motion to dismiss. *Jones v. Williams*, 861 A.2d 1269, 2004 D.C. App. LEXIS 620 (2004), amended by, remanded by 890 A.2d 178, 2005 D.C. App. LEXIS 208 (D.C. 2005), remanded sub nomine *District of Columbia v.*

Jones, 919 A.2d 604, 2007 D.C. App. LEXIS 151 (D.C. 2007).

Employee's sole recourse for alleged misrepresentation by District of Columbia's former inspector general was to file a grievance with the Office of Inspector General and to seek administrative relief pursuant to the Comprehensive Merit Personnel Act (CMPA), where employee, who retired from the federal government to take a position with the Office of Inspector General, alleged inspector general falsely represented to him, before he accepted the position in her office, that she had obtained a waiver from the federal government of the provision requiring an offset or deduction. *White v. District of Columbia*, 852 A.2d 922, 2004 D.C. App. LEXIS 309 (2004).

Comprehensive Merit Personnel Act (CMPA) governed police officer's challenge to District of Columbia Metropolitan Police Department's failure to promote her, and therefore police officer's failure to exhaust her administrative remedies under CMPA required dismissal of her lawsuit against Department. *D.C. Code 1981*, § 1-601.1 et seq. *Taggart-Wilson v. District of Columbia*, 675 A.2d 28, 1996 D.C. App. LEXIS 76 (1996).

Generally, District of Columbia employee subject to Comprehensive Merit Personnel Act (CMPA) or to CMPA-sanctioned collective bargaining agreement (CBA), may not maintain common-law action in court to remedy grievance against employer cognizable under CMPA, or under such agreement, unless employee has exhausted administrative procedures provided in that agreement. *D.C. Code 1981*, § 1-601.1 et seq. *Board of Trustees, Univ. of the D.C. v. Myers*, 652 A.2d 642, 1995 D.C. App. LEXIS 7 (1995).

As a general rule, in order to seek judicial review of an administrative personnel decision, a party first must exhaust administrative remedies. *Pender v. District of Columbia*, 430 A.2d 513, 1981 D.C. App. LEXIS 272 (1981).

Judicial review.

Under the prescribed and exclusive procedure of the District Comprehensive Merit Personnel Act (CMPA), judicial review occurs generally only in the District of Columbia courts at the culmination of the administrative appeal or grievance procedure. *Johnson v. District of Columbia*, 552 F.3d 806, 2008 U.S. App. LEXIS 25855 (C.A.D.C. 2008).

Objection by city at trial level to jurisdiction, based on labor union's failure to exhaust administrative remedies in action against city to enforce arbitration award, was sufficient to preserve for appellate review issue of whether trial court lacked jurisdiction under Comprehensive Merit Personnel Act (CMPA) to enforce an arbitration award. *District of Columbia v.*

AFGE, Local 1403, 19 A.3d 764, 2011 D.C. App. LEXIS 218 (2011).

Court of Appeals reviews the Office of Employee Appeals' (OEA) decision directly. *Levitt v. D.C. Office of Empl. Appeals*, 869 A.2d 364, 2005 D.C. App. LEXIS 50 (2005).

Laid-off public school attendance officer could not appeal to the Superior Court the denial of his request for severance pay, under the Comprehensive Merit Personnel Act, where he did not bring his appeal within 30 days. *Fisher v. District of Columbia*, 803 A.2d 962, 2002 D.C. App. LEXIS 385 (2002).

Thirty-day limitation on appeal of agency action under Comprehensive Merit Personnel Act (CMPA) is mandatory and jurisdictional. *Fisher v. District of Columbia*, 803 A.2d 962, 2002 D.C. App. LEXIS 385 (2002).

Superior Court is not an alternative forum, but rather serves as a last resort for reviewing decisions generated by Comprehensive Merit Personnel Act (CMPA) procedures. *Baker v. District of Columbia*, 785 A.2d 696, 2001 D.C. App. LEXIS 247 (2001).

Superior Court is not "alternative forum" in District of Columbia Comprehensive Merit Personnel Act's (CMPA) statutory scheme, but, rather, serves as "last resort" for reviewing decisions generated by CMPA procedures. D.C. Code 1981, § 1-601.1 et seq. *Robinson v. District of Columbia*, 748 A.2d 409, 2000 D.C. App. LEXIS 73 (2000).

Pendant appellate jurisdiction was not available on issue of whether District of Columbia Comprehensive Merit Personnel Act (DCCMPA) provided the exclusive process and remedy for physician's defamation action against chief of surgery at government hospital and hospital's attorney, since the record was inadequate for review and the issue was not inextricably intertwined with the question of whether the defendants were entitled to absolute immunity. D.C. Code 1981, §§ 1-601.1 to 1-627.2. *District of Columbia v. Simpkins*, 720 A.2d 894, 1998 D.C. App. LEXIS 219 (1998).

Trial court's failure to find that District of Columbia Comprehensive Merit Personnel Act (DCCMPA) provided the exclusive process and remedy for physician's defamation action against chief of surgery at government hospital and hospital's attorney was not subject to review under collateral order doctrine, since trial court had not conclusively ruled on it and court's ultimate determination of the issue could be reviewed as effectively on appeal of a final judgment as on an interlocutory appeal without jeopardizing the propriety of any administrative action under DCCMPA. D.C. Code 1981, §§ 1-601.1 to 1-627.2. *District of Columbia v. Simpkins*, 720 A.2d 894, 1998 D.C. App. LEXIS 219 (1998).

Former police officer failed to demonstrate error in dismissing his common-law claims

against District of Columbia and two of its officials arising out of his discharge; officer failed to include his complaint in record on appeal and, thus, Court of Appeals was unable to make meaningful determination as to whether claims were preempted by District of Columbia Comprehensive Merit Personnel Act (CMPA). D.C. Code 1981, § 1-601.1 et seq. *Roache v. District of Columbia*, 654 A.2d 1283, 1995 D.C. App. LEXIS 35 (1995).

Although recognizing that it could only affirm administrative agency's decision for reasons given by the agency, Court of Appeals would look to recommendations of hearing examiners in effort to more fully understand precise meaning of Office of Employee Appeals' (OEA) determination, that Civilian Complaint Review Board (CCRB) Act did not supersede in all respects those provisions of Comprehensive Merit Personnel Act (CMPA) relating to disciplinary proceedings within agency, because OEA affirmed recommendations of examiners and indicated agreement therewith. D.C. Code 1981, §§ 1-601.1 to 1-637.2, 4-901 to 4-911. *District of Columbia Metro. Police Dep't v. Perry*, 638 A.2d 1138, 1994 D.C. App. LEXIS 32 (1994).

Although review of Office of Employee Appeals' (OEA) decision, that police department violated Comprehensive Merit Personnel Act (CMPA) by imposing discipline without providing employee an opportunity to respond to proposed action against him, was initially in Superior Court, Court of Appeals would employ the same scope of review as in administrative cases that come directly to the Court. D.C. Code 1981, §§ 1-601.1 to 1-637.2, 1-606.3(d). *District of Columbia Metro. Police Dep't v. Perry*, 638 A.2d 1138, 1994 D.C. App. LEXIS 32 (1994).

Concept of special knowledge and expertise of agency that underlies rule according deference to agency in its interpretation of statute that it is empowered to administer and enforce had less applicability with respect to Court of Appeals review of Office of Employee Appeals' (OEA) decision interpreting and reconciling Comprehensive Merit Personnel Act (CMPA) with Civilian Complaint Review Board (CCRB) Act since OEA did not administer CCRB Act. D.C. Code 1981, §§ 1-601.1 to 1-637.2, 4-901 to 4-911. *District of Columbia Metro. Police Dep't v. Perry*, 638 A.2d 1138, 1994 D.C. App. LEXIS 32 (1994).

Court of Appeals defers to Public Employee Relations Board's interpretation of the Comprehensive Merit Personnel Act and will not reverse unless interpretation is unreasonable in light of prevailing law or inconsistent with the statute. D.C. Code 1981, §§ 1-601.1 to 1-637.2. *Teamsters Local Union 1714 v. Public Employee Relations Bd.*, 579 A.2d 706, 1990 D.C. App. LEXIS 208 (1990).

Police officers who were denied administrative sick leave by Metropolitan Police Department were entitled to have their claims considered by Office of Employee Appeals despite their failure to timely appeal denial to OEA, where Department had failed to inform officers of their right to OEA review. D.C. Code 1981, §§ 1-601.1 et seq., 1-603.1(10), 1-606.3, 1-606.4(e), 1-613.3(j). *District of Columbia v. Daniels*, 523 A.2d 569, 1987 D.C. App. LEXIS 325 (1987).

Pleadings.

Terminated correctional officer's amendment of her complaint as to District of Columbia would be futile; her claims against the District rested on the same underlying conduct as those in the original complaint, conduct for which district court determined she could pursue an administrative remedy under District of Columbia Comprehensive Merit Personnel Act (CMPA). *Johnson v. District of Columbia*, 244 F.R.D. 1, 2007 U.S. Dist. LEXIS 53338 (2007), affirmed in part by 2007 U.S. App. LEXIS 29623 (D.C. Cir. Dec. 18, 2007), affirmed by 552 F.3d 806, 384 U.S. App. D.C. 153, 2008 U.S. App. LEXIS 25855, 185 L.R.R.M. (BNA) 2684 (2008).

Preemption.

Mere fact that District of Columbia employees' claims against District and labor unions challenging terminations and denials of workers' compensation claims were based upon an alleged due process violation did not prevent preemption of such claims under District of Columbia Comprehensive Merit Protection Act (CMPA); factual allegations, rather than stating due process claims, suggested that employees were largely dissatisfied with the outcomes in their cases. *McManus v. District of Columbia*, 530 F.Supp.2d 46, 2007 U.S. Dist. LEXIS 94797 (2007).

Primary jurisdiction.

Federal question jurisdiction existed over workers' §§ 1983 action alleging District of Columbia and its mayor violated their right under the Fifth Amendment not to be deprived of property under color of District of Columbia law without due process by terminating their workers' compensation benefits without providing them with a post-deprivation hearing to challenge the termination, notwithstanding defendants claim that District of Columbia's Comprehensive Merit Personnel Act (CMPA) provided the exclusive remedy for the workers' claims; complaint alleged a cause of action arising under a federal statute, and CMPA did not foreclose district court from entertaining the constitutional question over which it had original jurisdiction. *Matthews v. District of Columbia*, 675 F.Supp.2d 180, 2009 U.S. Dist. LEXIS 121379 (2009).

District of Columbia Comprehensive Merit Protection Act (CMPA) preemption is so extensive that even if a substantial question exists as to whether a claim falls within the ambit of the CMPA, a plaintiff is still required in the first instance to invoke CMPA procedure because the determination whether the Office of Employee Appeals (OEA) has jurisdiction is quintessentially a decision for the OEA to make in the first instance. *McManus v. District of Columbia*, 530 F.Supp.2d 46, 2007 U.S. Dist. LEXIS 94797 (2007).

Superior Court lacked original jurisdiction over District of Columbia employee's defamation action against District, based on supervisor's allegations of employee's extramarital affair with another supervisor; exclusive remedy was grievance under Comprehensive Merit Personnel Act (CMPA). *Baker v. District of Columbia*, 785 A.2d 696, 2001 D.C. App. LEXIS 247 (2001).

Whether union-represented employee challenged his firing via Comprehensive Merit Personnel Act (CMPA) procedures or through CMPA-sanctioned collective bargaining agreement, Public Employee Relations Board (PERB) retained exclusive, original jurisdiction to determine whether a particular breach or alleged breach of duty of fair representation was also an unfair labor practice. D.C. Code 1981, § 1-601.1 et seq. *Cooper v. AFSCME, Local 1033*, 656 A.2d 1141, 1995 D.C. App. LEXIS 71 (1995).

Mere fact that teacher was dismissed prior to effective date of Comprehensive Merit Personnel Act, which established the Office of Employee Appeals (OEA) as tribunal initially charged with hearing appeals from adverse decisions of Board of Education, did not necessarily mean that teacher's appeal would lie directly to district court; OEA should at least have been given opportunity to hear teacher's appeal, where Board's notice of proposed adverse action was served on teacher long after effective date of Act. D.C. Code 1981, § 1-601.1 et seq. *Montgomery v. District of Columbia*, 598 A.2d 162, 1991 D.C. App. LEXIS 285 (1991).

Comprehensive Merit Personnel Act, establishing the Office of Employee Appeals (OEA) as tribunal initially charged with hearing appeals from adverse decisions of Board of Education, was procedural and not substantive in nature, within meaning of rule providing that procedural laws are generally given retrospective application. D.C. Code 1981, § 1-601.1 et seq. *Montgomery v. District of Columbia*, 598 A.2d 162, 1991 D.C. App. LEXIS 285 (1991).

Under Government Comprehensive Merit Personnel Act, District of Columbia courts do not have concurrent jurisdiction with Public Employee Relations Board. D.C. Code 1981, § 1-601.1 et seq. *Hawkins v. Hall*, 537 A.2d 571, 1988 D.C. App. LEXIS 39 (1988).

Public Employee Relations Board has primary jurisdiction to determine whether particular act or omission constitutes unfair labor practice under District of Columbia Government Comprehensive Merit Personnel Act. D.C. Code 1981, § 1-601.1 et seq. *Hawkins v. Hall*, 537 A.2d 571, 1988 D.C. App. LEXIS 39 (1988).

Purpose.

The District of Columbia Comprehensive Merit Protection Act (CMPA) was intended to create a mechanism for addressing virtually every conceivable personnel issue between the District and its employees. *Scott v. District of Columbia*, 598 F.Supp.2d 30, 2009 U.S. Dist. LEXIS 13030 (2009).

District of Columbia Comprehensive Merit Protection Act (CMPA) is plainly intended to create a mechanism for addressing virtually every conceivable personnel issue among the District, its employees, and their unions, with a reviewing role for the courts as a last resort, not a supplementary role for the courts as an alternative forum. *McManus v. District of Columbia*, 530 F.Supp.2d 46, 2007 U.S. Dist. LEXIS 94797 (2007).

District of Columbia Comprehensive Merit Personnel Act was intended to create a modern, flexible, and comprehensive system of public personnel administration in the District of Columbia government. D.C. Code 1981, § 1-601.1 et seq. *Council of School Officers v. Vaughn*, 553 A.2d 1222, 1989 D.C. App. LEXIS 14 (1989).

Torts.

Claims of public employees for District of Columbia alleging defamation and intentional infliction of emotional distress, based on statements to press made by District's Chief Financial Officer (CFO) negatively describing employees' job performance, arose out of

employment related dispute governed by Comprehensive Merit Personnel Act (CMPA) and, thus, were required to be first raised within CMPA's grievance procedure; statements were offered to explain to public reason for terminating employees. D.C. Code 1981, §§ 1-601.1 to 1-637.2. *Alexis v. District of Columbia*, 44 F.Supp.2d 331, 1999 U.S. Dist. LEXIS 4750 (1999).

Department of Corrections (DOC) correctional officer employed by District of Columbia was a "public official," and she therefore was required to prove actual malice in her defamation action against the District, relating to statement in facility-created employee newsletter implying that the correctional officer had received her officer-in-charge position through a "connection." *Beeton v. District of Columbia*, 779 A.2d 918, 2001 D.C. App. LEXIS 191 (2001).

When a claim is cognizable under the Comprehensive Merit Personnel Act (CMPA), that statute provides the complainant with his exclusive remedy, and suits in tort are generally preempted. D.C. Code 1981, § 1-601.1 et seq. *Grillo v. District of Columbia*, 731 A.2d 384, 1999 D.C. App. LEXIS 127 (1999).

Fraud and negligent misrepresentation claims brought by employee, who resigned his job with Department of Corrections after being advised that he had been accepted into police academy and then found out that his police application had been rejected, were at least arguably cognizable under Comprehensive Merit Personnel Act (CMPA), and thus, any final decision by court as to coverage should have been deferred until Office of Employee Appeals determined if it had jurisdiction over matter. D.C. Code 1981, § 1-601.1 et seq. *Grillo v. District of Columbia*, 731 A.2d 384, 1999 D.C. App. LEXIS 127 (1999).

§ 1-601.02. Purpose.

(a) The Council of the District of Columbia declares that it is the purpose and policy of this chapter to assure that the District of Columbia government shall have a modern flexible system of public personnel administration, which shall:

- (1) Provide for increasingly autonomous control over personnel administration by the District of Columbia government;
- (2) Create uniform systems for personnel administration among the executive departments and agencies reporting directly to the Mayor of the District of Columbia and among independent agencies, boards, and commissions in the District of Columbia government;
- (3) Create separate personnel management systems for educational employees of the School of Law, the District of Columbia Board of Education, and the University of the District of Columbia;
- (4) Insure the efficient administration of this personnel system;

(5) Establish impartial and comprehensive administrative or negotiated procedures for resolving employee grievances;

(6) Provide for a positive policy of labor-management relations including collective bargaining between the District of Columbia government and its employees; and

(7) Establish the means to recruit, select, develop, and maintain an effective and responsive work force consistent with merit principles.

(b) The Career and Educational Services established in subchapters VIII and VIII-A of this chapter shall follow merit principles such as the following:

(1) Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge and skills, including open and competitive consideration of qualified applicants for initial appointment;

(2) Providing equitable and adequate compensation;

(3) Training employees, as needed, to assure high-quality performance;

(4) Retaining employees on the basis of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected; and

(5) Assuring, as provided in this chapter, fair treatment of applicants and employees in all aspects of employment without regard to political affiliation, race, color, national origin, sex, religious belief, age, marital status, personal physical appearance, sexual orientation, gender identity or expression, family responsibilities, physical disability, or developmental disability. A proper regard shall be accorded all rights of privacy and other constitutionally protected rights of citizens.

(c) Employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

(Mar. 3, 1979, D.C. Law 2-139, § 103, 25 DCR 5740; Feb. 24, 1987, D.C. Law 6-177, § 3(a), 33 DCR 7241; Apr. 24, 2007, D.C. Law 16-305, § 3(a), 53 DCR 6198; June 25, 2008, D.C. Law 17-177, § 3(a), 55 DCR 3696.)

Cross references. — Commission on the arts and humanities, executive director, see § 39-205.

District of Columbia retirement board, see § 1-711.

Election campaigns, conflict of interest, disclosure, see § 1-1106.02.

Lobbying, "official in the executive branch" defined, see § 1-1105.01.

Merit system, disability compensation, computation, see § 1-623.14.

Merit system, disability compensation, deaths resulting from injuries sustained on duty, compensation, beneficiaries, see § 1-623.33.

Merit system, disability compensation, maximum and minimum compensation rates, see § 1-623.12.

Merit system, educational employees, coverage, see § 1-602.03.

Merit system, effective date provisions, see § 1-636.02.

Merit system, employee conduct, ethics counselors, see § 1-618.03.

Office of business and economic development, executive director, see § 2-1201.04.

Office of Latino affairs, executive director, see § 2-1312.

Office of people's counsel, powers and duties, see § 34-804.

Office on aging, executive director, see § 7-503.02.

Public service commission, membership, see § 34-801.

Rental housing commission, powers and duties, see § 42-3502.01.

Prior Codifications. — 1981 Ed., § 1-601.2.

1973 Ed., § 1-331.2.

Effect of amendments. — D.C. Law 16-

305, in subsec. (b)(5), substituted "disability" for "handicap".

D.C. Law 17-177, in subsec. (f), substituted "sexual orientation, gender identity or expression" for "sexual orientation or preference".

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 6-177. — Law 6-177 was introduced in Council and assigned Bill No. 6-472, which was referred to the Committee on Education. The Bill was adopted on first and second readings on September 23, 1986 and October 7, 1986, respectively. Approved without the signature of the Mayor on

October 31, 1986, it was assigned Act No. 6-227 and transmitted to both Houses of Congress for its review.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 1-307.02.

Legislative history of Law 17-177. — For Law 17-177, see notes following § 1-309.01.

Editor's notes. — Repeal of § 3 of Law 6-177: Section 4(b) of D.C. Law 6-177 provided that the provisions of § 3 are repealed on the 1st day following the 36-month period after February 24, 1987.

Repeal of § 4(b) of Law 6-177: Section 3(b) of D.C. Law 8-74, effective March 15, 1990, provided that § 4(b) of D.C. Law 6-177 is repealed.

CASE NOTES

ANALYSIS

Construction and application.

Construction with other provisions.

Exclusivity of remedies.

Finality.

Construction and application.

The District of Columbia Comprehensive Merit Protection Act (CMPA) was intended to create a mechanism for addressing virtually every conceivable personnel issue between the District and its employees. *Scott v. District of Columbia*, 598 F.Supp.2d 30, 2009 U.S. Dist. LEXIS 13030 (2009).

District of Columbia Comprehensive Merit Protection Act (CMPA) is plainly intended to create a mechanism for addressing virtually every conceivable personnel issue among the District, its employees, and their unions, with a reviewing role for the courts as a last resort, not a supplementary role for the courts as an alternative forum. *McManus v. District of Columbia*, 530 F.Supp.2d 46, 2007 U.S. Dist. LEXIS 94797 (2007).

Comprehensive Merit Personnel Act (CMPA) was intended to provide district employees with their exclusive remedies for claims arising out of employer conduct in handling personnel ratings, employee grievances and adverse actions, and thus precluded litigation of former employee's emotional distress and defamation claims in the Superior Court in the first instance. D.C. Code 1981, §§ 1-213(c), 1-242(3), 1-615.1 to 1-615.5, 1-617.1 to 1-617.3, 1-637.1; 5 U.S.C. §§ 1101 et seq., 8101-8193. *District of Columbia v. Thompson*, 593 A.2d 621, 1991 D.C. App. LEXIS 172 (1991), writ of certiorari denied by 502 U.S. 942, 112 S. Ct. 380, 116 L. Ed. 2d 331, 1991 U.S. LEXIS 6258, 60 U.S.L.W. 3342 (1991).

The Comprehensive Merit Personnel Act (CMPA) was intended to create a modern, flexible, comprehensive citywide system of public

personnel administration that would provide for the efficient administration of the district personnel system and establish impartial and independent administrative procedures for resolving employee grievances and to replace the preexisting federal system. D.C. Code 1981, §§ 1-624.2 to 1-624.46. *District of Columbia v. Thompson*, 593 A.2d 621, 1991 D.C. App. LEXIS 172 (1991), writ of certiorari denied by 502 U.S. 942, 112 S. Ct. 380, 116 L. Ed. 2d 331, 1991 U.S. LEXIS 6258, 60 U.S.L.W. 3342 (1991).

From the purpose and text of the Comprehensive Merit Personnel Act (CMPA), including its judicial review provisions, the CMPA was intended to create a mechanism for addressing virtually every conceivable personnel issue among the District, its employees, and their unions, with reviewing role for the courts as a last resort, not a supplementary role for the courts as an alternative forum. D.C. Code 1981, §§ 1-624.2 to 1-624.46. *District of Columbia v. Thompson*, 593 A.2d 621, 1991 D.C. App. LEXIS 172 (1991), writ of certiorari denied by 502 U.S. 942, 112 S. Ct. 380, 116 L. Ed. 2d 331, 1991 U.S. LEXIS 6258, 60 U.S.L.W. 3342 (1991).

In attempting to ascertain legislative intent for a modern comprehensive regulatory statute that creates new rights and remedies, an exception to the rule of strict construction is customarily made for a statute which purports to provide a complete system of law covering all aspects of the subject with which it deals. *District of Columbia v. Thompson*, 593 A.2d 621, 1991 D.C. App. LEXIS 172 (1991), writ of certiorari denied by 502 U.S. 942, 112 S. Ct. 380, 116 L. Ed. 2d 331, 1991 U.S. LEXIS 6258, 60 U.S.L.W. 3342 (1991).

District of Columbia Comprehensive Merit Personnel Act was intended to create a modern, flexible, and comprehensive system of public personnel administration in the District of Co-

lumbia government. D.C. Code 1981, § 1-601.1 et seq. *Council of School Officers v. Vaughn*, 553 A.2d 1222, 1989 D.C. App. LEXIS 14 (1989).

Construction with other provisions.

Comprehensive Merit Personnel Act (CMPA) disability compensation provisions should not be read in *pari materia* with CMPA personnel evaluation provisions in light of different subject matters and purposes of the two groups of provisions; disability compensation provisions were intended to displace common law with compensation scheme that provided fixed immediate benefits for on-the-job injuries regardless of fault, while personnel evaluation provisions established new comprehensive merit based system for evaluating employees, and thus inclusion of exclusivity provision in disability compensation provisions did not necessarily indicate conscious intention by legislators to fail to make personnel evaluation provisions exclusive. D.C. Code 1981, §§ 1-607.1 to 1-612.17, 1-616.1 to 1-618.17, 1-621.1 to 1-624.46. *District of Columbia v. Thompson*, 593 A.2d 621, 1991 D.C. App. LEXIS 172 (1991), writ of certiorari denied by 502 U.S. 942, 112 S. Ct. 380, 116 L. Ed. 2d 331, 1991 U.S. LEXIS 6258, 60 U.S.L.W. 3342 (1991).

Exclusivity of remedies.

District of Columbia Comprehensive Merit Protection Act (CMPA) provided exclusive avenue for District employees' complaint that District failed to maintain and protect performance-based merit system and Labor-Management relations systems. *McManus v. District of Columbia*, 530 F.Supp.2d 46, 2007 U.S. Dist. LEXIS 94797 (2007).

In determining whether the Comprehensive Merit Personnel Act's (CMPA) comprehensive remedial system should be understood to preclude or to leave room for common-law tort remedies, court could examine whether the continued availability of common-law damage remedies would compliment or undermine the statutory scheme as a whole. D.C. Code 1981, §§ 1-624.2 to 1-624.46. *District of Columbia v. Thompson*, 593 A.2d 621, 1991 D.C. App. LEXIS 172 (1991), writ of certiorari denied by 502 U.S. 942, 112 S. Ct. 380, 116 L. Ed. 2d 331, 1991 U.S. LEXIS 6258, 60 U.S.L.W. 3342 (1991).

In determining whether personnel evaluation provisions of Comprehensive Merit Personnel Act (CMPA) were exclusive, court could consider that burden of an employer's having to

anticipate and deal with two, often substantially different, remedial systems, consisting of administrative review and tort litigation, available at election of each employee, was likely to have chilling effect on mandated and bargained personnel procedures, with debilitating results on merit personnel system. D.C. Code 1981, §§ 1-624.2 to 1-624.46. *District of Columbia v. Thompson*, 593 A.2d 621, 1991 D.C. App. LEXIS 172 (1991), writ of certiorari denied by 502 U.S. 942, 112 S. Ct. 380, 116 L. Ed. 2d 331, 1991 U.S. LEXIS 6258, 60 U.S.L.W. 3342 (1991).

In determining whether personnel evaluation provisions of the Comprehensive Merit Personnel Act (CMPA) were exclusive, court could consider that CMPA's administrative procedures, allowing employees to obtain substantial relief and some remedies affording more complete relief than damage remedies available at common law, its failure to require an employee to overcome qualified immunity of government officials and the fact that its procedures were speedier and less costly than litigation, when coupled with judicial review, were substantial benefits not clearly outweighed by the lack of a jury trial option, when balanced against the costs including delays in obtaining damage remedies. D.C. Code 1981, §§ 1-624.2 to 1-624.46. *District of Columbia v. Thompson*, 593 A.2d 621, 1991 D.C. App. LEXIS 172 (1991), writ of certiorari denied by 502 U.S. 942, 112 S. Ct. 380, 116 L. Ed. 2d 331, 1991 U.S. LEXIS 6258, 60 U.S.L.W. 3342 (1991).

When a statute creating new rights and remedies does not expressly exclude common-law remedies or declare new remedies exclusive, the court decides whether those remedies remain available by looking initially at the purpose of the statute, the entirety of its text, and the structure of review that it establishes. *District of Columbia v. Thompson*, 593 A.2d 621, 1991 D.C. App. LEXIS 172 (1991), writ of certiorari denied by 502 U.S. 942, 112 S. Ct. 380, 116 L. Ed. 2d 331, 1991 U.S. LEXIS 6258, 60 U.S.L.W. 3342 (1991).

Finality.

One of the principle rationales of finality requirement is to avoid resolution of issues on review which may become moot once the original decision-making process contemplated by statute is completed. *Council of School Officers v. Vaughn*, 553 A.2d 1222, 1989 D.C. App. LEXIS 14 (1989).

Subchapter II. Coverage; Status of Present Employees; Retention of Existing Personnel Rights and Benefits.

§ 1-602.01. Coverage; exceptions.

(a) Except as provided in subsection (c) of this section, unless specifically exempted from certain provisions, this chapter shall apply to all employees of the District of Columbia government, except the Chief Judges and Associate Judges of the Superior Court of the District of Columbia and the District of Columbia Court of Appeals and the nonjudicial personnel of said Courts. With the exception of subchapters V and XVII of this chapter, and § 1-608.01(e), employees of the D.C. General Hospital and the D.C. General Hospital Commission shall be exempt from the provisions of this chapter.

(b) Repealed.

(c) The provisions of subchapter XV-A shall apply to employees of all District agencies, including, but not limited to employees of subordinate agencies, independent agencies, the District of Columbia Board of Education, the Board of Trustees of the University of the District of Columbia, the District of Columbia Housing Authority, and the Metropolitan Police Department.

(d) With the exception of subchapters V, XXVII, XV-A, XXI, XXII, XXIII and XXVI, employees of the District of Columbia Housing Authority shall be exempt from the provisions of this chapter.

(Mar. 3, 1979, D.C. Law 2-139, § 201, 25 DCR 5740; Oct. 1, 1987, D.C. Law 7-27, § 2(a), 34 DCR 5079; Mar. 16, 1989, D.C. Law 7-228, § 2(a), 36 DCR 754; Aug. 5, 1997, 111 Stat. 760, Pub. L. 105-33, § 11261(b)(1); Oct. 7, 1998, D.C. Law 12-160, § 102(a)(1), 45 DCR 5147; May 9, 2000, D.C. Law 13-105, § 27, 47 DCR 1325; June 12, 2003, D.C. Law 14-310, § 4(a), 50 DCR 1092.)

Prior Codifications. — 1981 Ed., § 1-602.1.

1973 Ed., § 1-332.1.

Effect of amendments. — D.C. Law 13-105 added subsec. (d).

D.C. Law 14-310, in subsec. (c), validated a previously made technical correction.

Emergency legislation. — For temporary amendment of section, see § 102(a)(1) of the Whistleblower Reinforcement Emergency Amendment Act of 1998 (D.C. Act 12-400, July 13, 1998, 45 DCR 5158) and § 102(a)(1) of the Whistleblower Reinforcement Congressional Review Emergency Act of 1998 (D.C. Act 12-464, October 28, 1998, 45 DCR 7821).

For temporary (90-day) amendment of section, see § 26 of the District of Columbia Housing Authority Emergency Act of 1999 (D.C. Act 13-259, February 9, 2000, 47 DCR 1129).

For temporary (90-day) amendment of section, see § 26 of the District of Columbia Housing Authority Congressional Review Emergency Act of 2000 (D.C. Act 13-346, June 5, 2000, 47 DCR 4980).

Legislative history of Law 2-139. — For

legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 7-27. — For legislative history of D.C. Law 7-27, see Historical and Statutory Notes following § 1-621.02.

Legislative history of Law 7-228. — Law 7-228 was introduced in Council and assigned Bill No. 7-536, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on January 11, 1989, it was assigned Act No. 7-303 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-160. — Law 12-160, the “Whistleblower Reinforcement Act of 1998,” was introduced in Council and assigned Bill No. 12-191, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on May 5, 1998, and June 2, 1998, respectively. Signed by the Mayor on June 23, 1998, it was assigned Act No. 12-398 and transmitted to

both Houses of Congress for its review. D.C. Law 12-160 became effective on October 7, 1998.

Legislative history of Law 13-105. — Law 13-105, the “District of Columbia Housing Authority Act of 1999,” was introduced in Council and assigned Bill No. 13-169, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 7, 1999, and December 21, 1999, respectively. Signed by the Mayor on January 18, 2000, it was assigned

Act No. 13-254 and transmitted to both Houses of Congress for its review. D.C. Law 13-105 became effective on May 9, 2000.

Legislative history of Law 14-310. — For Law 14-310, see notes following § 1-307.63.

Editor’s notes. — Washington Convention Center: Section 9-817 of the D.C. Code provided that the District of Columbia Government Comprehensive Merit Personnel Act of 1978 shall not apply to employees of the Washington Convention Center.

CASE NOTES

ANALYSIS

Appellate jurisdiction.

Construction and application.

Exclusivity of remedy.

Review.

Standard of review.

Appellate jurisdiction.

Office of Employee Appeals (OEA) has exclusive appellate jurisdiction over claims against the District of Columbia arising under the Comprehensive Merit Personnel Act (CMPA). D.C. Code 1981, § 1-606.3. *Grillo v. District of Columbia*, 731 A.2d 384, 1999 D.C. App. LEXIS 127 (1999).

Determination whether the Office of Employee Appeals (OEA) has jurisdiction is quintessentially a decision for the OEA to make in the first instance. *Grillo v. District of Columbia*, 731 A.2d 384, 1999 D.C. App. LEXIS 127 (1999).

The authority of the Educational Institution Licensure Commission to appoint, and hence to promote, its personnel did not survive the passage of the Comprehensive Merit Personnel Act; under the Act, the mayor is the personnel authority for the Commission. D.C. Code 1981, §§ 1-601.1(3), 1-601.2(a)(2), 1-602.1, 1-603.1(14), 1-604.6(a, b), 1-633.5(b), 31-1601 et seq., 31-1605(b). *Sims v. District of Columbia*, 531 A.2d 648, 1987 D.C. App. LEXIS 443 (1987).

Construction and application.

District of Columbia Comprehensive Merit Personnel Act (CMPA) does not apply to public defender service (PDS) or its employees. *Chase v. Public Defender Serv.*, 956 A.2d 67, 2008 D.C. App. LEXIS 394 (2008).

Rejected applicant for employment is not a person who performs a District of Columbia government function or who receives compensation for performing one for purposes of the Comprehensive Merit Personnel Act (CMPA) which defines “employee” as an individual who performs a function of the District government and who receives compensation for the perfor-

mance of such services. D.C. Code 1981, § 1-603.1(7). *Grillo v. District of Columbia*, 731 A.2d 384, 1999 D.C. App. LEXIS 127 (1999).

Fraud and negligent misrepresentation claims brought by employee, who resigned his job with Department of Corrections after being advised that he had been accepted into police academy and then found out that his police application had been rejected, were at least arguably cognizable under Comprehensive Merit Personnel Act (CMPA), and thus, any final decision by court as to coverage should have been deferred until Office of Employee Appeals determined if it had jurisdiction over matter. D.C. Code 1981, § 1-601.1 et seq. *Grillo v. District of Columbia*, 731 A.2d 384, 1999 D.C. App. LEXIS 127 (1999).

Nonattorney employee of Public Defender Service was covered by Comprehensive Merit Personnel Act. D.C. Code 1981, § 1-601.1 et seq. *Public Defender Serv. v. Saint-Preux*, 691 A.2d 1160, 1997 D.C. App. LEXIS 58 (1997).

Exclusivity of remedy.

District of Columbia’s Comprehensive Merit Personnel Act (CMPA) preempted tort claims by former Director of D.C. Office of Human Rights (OHR), an at-will employee and member of the Executive Service rather than the Excepted Service, against D.C. mayor for false light invasion of privacy, defamation, and intentional infliction of emotional distress. *Holman v. Williams*, 436 F.Supp.2d 68, 2006 U.S. Dist. LEXIS 44805 (2006).

When a claim is cognizable under the Comprehensive Merit Personnel Act (CMPA), that statute provides the complainant with his exclusive remedy, and suits in tort are generally preempted. D.C. Code 1981, § 1-601.1 et seq. *Grillo v. District of Columbia*, 731 A.2d 384, 1999 D.C. App. LEXIS 127 (1999).

Review.

Court of Appeals defers to agency’s interpretation of statute it administers unless that interpretation is unreasonable in light of prevailing law, inconsistent with statute, or plainly erroneous, even if there is significant

dispute over coverage of relevant statute. *Public Defender Serv. v. Saint-Preux*, 691 A.2d 1160, 1997 D.C. App. LEXIS 58 (1997).

Standard of review.

Impact of National Capital Revitalization and Self-Government Improvement Act and District of Columbia Courts and Justice Technical Corrections Act on Court of Appeals' Saint-Preux decision, which upheld as reasonable the interpretation of Office of Employee

Appeals (OEA) that District of Columbia Comprehensive Merit Personnel Act (CMPA) covered public defender service (PDS) non-attorney employees and current application of CMPA to PDS were questions of statutory construction that Court of Appeals would review de novo in former employee's action that sought judicial review of OEA's dismissal of appeal of termination from PDS. *Chase v. Public Defender Serv.*, 956 A.2d 67, 2008 D.C. App. LEXIS 394 (2008).

§ 1-602.02. Limited application of chapter.

The provisions of this chapter shall apply to the following employees of the District of Columbia government only to the following extent:

(1) The Mayor and each member of the Council of the District of Columbia are entitled to pay, as provided in § 1-611.09, in accordance with the provisions of §§ 1-204.21(d) and 1-204.03(a). The Mayor and each member of the Council of the District of Columbia may participate in personnel benefit programs authorized in subchapters XXI, XXII, XXIII, and XXVI of this chapter, and are covered by the provisions of subchapters XVIII, XXV, XXIX, XXX, and XXXI of this chapter, and § 1-604.08;

(2) The President and each member of the District of Columbia Board of Education are entitled to pay, as provided in § 1-611.10, and may participate in personnel benefit programs authorized in subchapters XXI, XXII, XXIII, and XXVI of this chapter. The President and each member of the District of Columbia Board of Education are covered by the provisions of subchapters XXV, XXVIII, XXIX, XXX, and XXXI of this chapter, and § 1-604.08;

(3) Except as otherwise provided in this chapter, each member of a board or commission appointed to perform part-time, temporary or intermittent duties is entitled to pay as provided in § 1-611.08. Full-time employees who serve on boards and commissions shall be paid in accordance with the provisions of § 1-611.04 or § 1-611.11. Individuals serving as employees of boards and commissions shall be covered by the provisions of § 1-608.01(e). Members of boards and commissions are covered by the provisions of subchapters XVIII, XIII, XV, XXIX, XXX, and XXXI and §§ 1-604.08 and 1-608.01(e) and shall, if eligible under the terms of an agreement entered into by the Mayor and a federal agency under the provisions of subchapter XXVIII of this chapter, be covered by the provisions of subchapters XXI, XXII, and XXVI of this chapter. This section shall not apply to compensation received by the Board of Education as provided in § 1-611.10;

(4) Each person employed as an educational employee of the District of Columbia Board of Education and the Board of Trustees of the University of the District of Columbia shall be governed by the provisions of § 1-602.03.

(5) Each person employed by an Advisory Neighborhood Commission shall be governed by the provisions of subchapters XXI and XXII of this chapter.

(6) Notwithstanding any other provision of District law, subchapter XV-A shall apply to all District employees.

(Mar. 3, 1979, D.C. Law 2-139, § 202, 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(a), 27 DCR 2632; Feb. 24, 1987, D.C. Law 6-177, § 3(b), 33 DCR 7241; Nov. 5, 1990, 104 Stat. 2237, Pub. L. 101-518, § 136(a); Mar. 6, 1991, D.C. Law 8-203, § 4, 37 DCR 8420; Aug. 1, 1996, D.C. Law 11-152, § 302(a), 43 DCR 2978; Oct. 7, 1998, D.C. Law 12-160, § 102(a)(2), 45 DCR 5147; June 12, 2003, D.C. Law 14-310, § 4(b), 50 DCR 1092.)

Cross references. — Merit system, applicability to national capital revitalization corporation, see § 2-1219.05.

Merit system, applicability to Washington Convention Center employees, see § 10-1202.16.

Section references. — This section is referred to in § 1-604.04.

Prior Codifications. — 1981 Ed., § 1-602.2.

1973 Ed., § 1-332.2.

Effect of amendments. — D.C. Law 14-310, in subsec. (c), validated a previously made technical correction.

Emergency legislation. — For temporary amendment of section, see § 102(a)(2) of the Whistleblower Reinforcement Emergency Amendment Act of 1998 (D.C. Act 12-400, July 13, 1998, 45 DCR 5158) and § 102(a)(2) of the Whistleblower Reinforcement Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-464, October 28, 1998, 45 DCR 7821).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 3-81. — Law 3-81 was introduced in Council and assigned Bill No. 3-236, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 22, 1980 and May 20, 1980, respectively. Signed by the Mayor on June 4, 1980, it was assigned Act No. 3-195 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-177. — For legislative history of D.C. Law 6-177, see Historical and Statutory Notes following § 1-601.02.

Legislative history of Law 8-203. — Law 8-203 was introduced in Council and assigned Bill No. 8-626, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 20, 1990, and December 4, 1990, respectively. Signed by the Mayor on December 14, 1990, it was assigned Act No. 8-277 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-152. — Law 11-152, the "Fiscal Year 1996 Budget Support Act of 1996," was introduced in Council and assigned Bill No. 11-655, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 2, 1996, and May 7, 1996, respectively. Signed by the Mayor on May 28, 1996, it was assigned Act No. 11-279 and transmitted to both Houses of Congress for its review. D. C. Law 11-152 became effective on August 1, 1996.

Legislative history of Law 12-160. — For legislative history of D.C. Law 12-160, see Historical and Statutory Notes following § 1-602.01.

Legislative history of Law 14-310. — For Law 14-310, see notes following § 1-307.63.

Effective date. — Section 136(b) of Public Law 101-518, the District of Columbia Appropriations Act, 1991, provided that the amendments made by § 136(a) shall take effect as if included in the enactment of the Residency Preference Amendment Act of 1988 (D.C. Law 7-203, March

Editor's notes. — Repeal of § 3 of Law 6-177: Section 4(b) of D.C. Law 6-177 provided that the provisions of § 3 are repealed on the 1st day following the 36-month period after February 24, 1987.

Repeal of § 4(b) of Law 6-177: Section 3(b) of D.C. Law 8-74, effective March 15, 1990, provided that § 4(b) of D.C. Law 6-177 is repealed.

CASE NOTES

Due Process.

Although District of Columbia Comprehensive Merit Personnel Act (CMPA) provided exclusive avenue for aggrieved District employees to pursue work-related complaints, CMPA did not foreclose court from entertaining District employee's claim that District and District offi-

cials violated her due process rights by allegedly terminating her worker's compensation benefits. *Deschamps v. District of Columbia*, 582 F.Supp.2d 14, 2008 U.S. Dist. LEXIS 85539 (2008), dismissed by 2009 U.S. Dist. LEXIS 3788 (D.D.C. Jan. 21, 2009).

§ 1-602.03. Educational employees of the District of Columbia Board of Education and the Board of Trustees of the University of the District of Columbia.

(a) Educational employees of the District of Columbia Board of Education and the Board of Trustees of the University of the District of Columbia shall be governed by the provisions of this chapter with the exception of subchapters VIII, IX (except to the extent provided therein), and X-A of this chapter. Subchapter VIII-A of this chapter shall only apply to such educational employees.

(b) Educational employees of the Board of Trustees of the University of the District of Columbia shall not be governed by the provisions of § 1-609.01 relating to the development of job descriptions in consultation with the Mayor. The Board of Trustees of the University of the District of Columbia shall develop policies on classification, appointment, promotion, retention, and tenure of employees consistent with the educational missions of their respective schools and in accordance with the sound policies and practices of the American Bar Association in the case of the School of Law, and of land-grant universities that meet the standards established by the College and Universities Personnel Association in the case of the University of the District of Columbia. Additionally, educational employees shall not be covered by subchapters VIII, X, XI (except as it provides for pay setting), XIII, XIII-A, XIX, and XXIV of this chapter.

(c) Notwithstanding the provisions of Unit A of Chapter 14 of Title 2, each qualified District resident applicant shall receive an additional 10-point preference over a qualified non-District resident applicant to fill all positions as non-educational employees of the District of Columbia Board of Education and Board of Trustees of the University of the District of Columbia unless the applicant declines the preference. This 10-point preference shall be in addition to, and not instead of, qualifications established for the position. All persons hired after February 6, 2008, shall submit proof of residency upon employment in a manner determined by the respective Boards. An applicant claiming the hiring preference under this section shall agree in writing to maintain bona fide District residency for a period of 7 consecutive years from the effective date of hire and shall provide proof of residency annually to the Director of Personnel for the first 7 years of employment. Failure to maintain District residency for the consecutive 7-year period shall result in forfeiture of employment. The District of Columbia Board of Education and Board of Trustees of the University of the District of Columbia shall submit to the Mayor and Council annual reports detailing the names of all new employees and their pay schedules, titles, and place of residence.

(Mar. 3, 1979, D.C. Law 2-139, § 203, 25 DCR 5740; Feb. 24, 1987, D.C. Law 6-177, § 3(c), 33 DCR 7241; Aug. 1, 1996, D.C. Law 11-152, § 302(b), 43 DCR 2978; Mar. 24, 1998, D.C. Law 12-81, § 2(a), 45 DCR 745; Apr. 12, 2000, D.C. Law 13-91, § 103(a), 47 DCR 520; Feb. 6, 2008, D.C. Law 17-108, § 203(a), 54 DCR 10993.)

Section references. — This section is referred to in §§ 1-602.02, 1-604.04, 1-604.06, and 1-608.01a.

Prior Codifications. — 1981 Ed., § 1-602.3.

1973 Ed., § 1-332.3.

Effect of amendments. — D.C. Law 13-91, in subsec. (a), in the first sentence, substituted “XI-A” for “XI”.

D.C. Law 17-108 added subsec. (c).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 6-177. — For legislative history of D.C. Law 6-177, see Historical and Statutory Notes following § 1-601.02.

Legislative history of Law 11-152. — For legislative history of D.C. Law 11-152, see Historical and Statutory Notes following § 1-602.02.

Legislative history of Law 12-81. — Law 12-81, the “Technical Amendments Act of 1997,” was introduced in Council and assigned Bill No. 12-408, which was referred to the Commit-

tee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

Legislative history of Law 13-91. — Law 13-91, the “Technical Amendments Act of 1999,” was introduced in Council and assigned Bill No. 13-435, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 2, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000.

Legislative history of Law 17-108. — For Law 17-108, see notes following § 1-209.05.

Editor’s notes. — Repeal of § 3 of Law 6-177: Section 4(b) of D.C. Law 6-177 provided that the provisions of § 3 are repealed on the 1st day following the 36-month period after February 24, 1987.

Repeal of § 4(b) of Law 6-177: See Historical and Statutory Notes following § 1-602.02.

CASE NOTES

ANALYSIS

Mayoral authority.

Reductions in force.

—Educational employees, reductions in force.

—In general.

—Noneducational employees, reductions in force.

Mayoral authority.

The authority of the Educational Institution Licensure Commission to appoint, and hence to promote, its personnel did not survive the passage of the Comprehensive Merit Personnel Act; under the Act, the mayor is the personnel authority for the Commission. D.C. Code 1981, §§ 1-601.1(3), 1-601.2(a)(2), 1-602.1, 1-603.1(14), 1-604.6(a, b), 1-633.5(b), 31-1601 et seq., 31-1605(b). *Sims v. District of Columbia*, 531 A.2d 648, 1987 D.C. App. LEXIS 443 (1987).

Reductions in force.

— Educational employees, reductions in force.

Public university’s reduction in force (RIF) regulations covered faculty members, and thus university was acting within its authority when it conducted RIF in which former dean, who was faculty member, was laid off, where regulations specifically applied to all employees of university in educational service, and for purposes of RIF, employees in “educational service”

included faculty members. *Hahn v. Univ. of the Dist. of Columbia*, 789 A.2d 1252, 2002 D.C. App. LEXIS 7 (2002).

Even if collective bargaining agreement (CBA) did not apply to former dean of college at public university, who was faculty member, university president’s determination that former dean’s tenured status did not shield him from reduction in force (RIF) was not arbitrary or capricious, and thus was valid given that there was no regulatory basis for determining that former dean’s tenure was different from traditional faculty review tenure for purposes of RIF. *Hahn v. Univ. of the Dist. of Columbia*, 789 A.2d 1252, 2002 D.C. App. LEXIS 7 (2002).

Finding of public university president, that fact that former dean, who was faculty member, was retained, albeit improperly, during prior reduction in force (RIF), made him subject to later RIF, was not arbitrary or capricious, or erroneous as a matter of law, and thus had to be upheld. *Hahn v. Univ. of the Dist. of Columbia*, 789 A.2d 1252, 2002 D.C. App. LEXIS 7 (2002).

Statute providing that it is intent of the Council of the District of Columbia that District’s personnel management system provide for equitable application of appropriate rules or regulations among all agencies was not intended to require that District university establish reduction in force (RIF) rules or any other employment practices that were identical or even similar—other than in their equitable

nature—to those governing other District agencies. *Harrison v. Board of Trustees of the Univ. of the District of Columbia*, 758 A.2d 19, 2000 D.C. App. LEXIS 194 (2000).

General provisions of the Comprehensive Merit Personnel Act authorizing appeals from “adverse actions” and “grievances” do not permit university employees to appeal from dismissal resulting from reduction in force, in light of specific provisions excluding educational employees from subchapter granting employees right to appeal reduction in force. D.C. Code 1981, §§ 1-602.3(b), 1-617.1 et seq., 1-617.1, 1-617.2, 1-625.1 et seq. *Davis v. University of Dist. of Columbia*, 603 A.2d 849, 1992 D.C. App. LEXIS 34 (1992).

— In general.

“Reduction in force,” for purposes of District of Columbia employee appeal rights, is reduction in personnel caused by lack of funding or discontinuance or curtailment of department, program, or function of agency; reduction in force, unlike “adverse action,” has no role as

punitive or corrective action and should leave no blemish on employee’s records and, in contrast to “grievance,” reduction in force is initiated by agency rather than employee. D.C. Code 1981, §§ 1-602.3(b), 1-617.1 et seq., 1-617.1, 1-617.2, 1-625.1 et seq. *Davis v. University of Dist. of Columbia*, 603 A.2d 849, 1992 D.C. App. LEXIS 34 (1992).

— Noneducational employees, reductions in force.

University rule providing that employee may file appeal if employee believes that university has incorrectly applied reduction in force rules and regulations confers right of appeal to Office of Employee Appeals only to noneducational employees, in light of provisions of the Government Comprehensive Merit Personnel Act on appeals of reduction in force, from which educational employees are expressly excluded. D.C. Code 1981, §§ 1-602.3(b), 1-606.1 et seq., 1-606.3, 1-609.1(b)(1). *Davis v. University of Dist. of Columbia*, 603 A.2d 849, 1992 D.C. App. LEXIS 34 (1992).

§ 1-602.04. Status of employees employed by the District of Columbia government on the date that this chapter becomes effective as provided in § 1-636.02; retention of existing rights.

(a) Persons employed by the District of Columbia government serving on the date that this chapter becomes effective, as provided in § 1-636.02, shall be guaranteed rights and benefits at least equal to those currently applicable to such persons under provisions of personnel law and rules and regulations in force on the date immediately prior to the date that this chapter becomes effective as provided in § 1-636.02.

(b) All provisions of existing contracts between the District government and labor organizations shall be honored until their expiration.

(c) On January 1, 1980, all persons employed by the District of Columbia government, including those persons employed by the District of Columbia government on the date that this chapter becomes effective as provided in § 1-636.02, shall automatically transfer into the appropriate personnel system as established pursuant to subchapters VIII and VIII-A of this chapter or § 1-609.04 or 1-609.09. The classification of and compensation for the position assumed upon transfer, and the rights and benefits inhering in such position, shall be at least equal to the classification, compensation, rights and benefits associated with the position from which said employee is transferred. The rights and benefits protected under this subsection shall be only those applicable to said employees under the provisions of personnel laws and rules and regulations in force on December 31, 1979: Provided, however, that no employee covered under the provision of this subsection shall be reduced in pay except as provided in subchapter XXIV of this chapter.

(d) After January 1, 1980, persons employed by the District of Columbia government on the date that this chapter becomes effective as provided in

§ 1-636.02 and who transfer into the appropriate personnel system, pursuant to subsection (c) of this section, shall be governed by the provisions of this chapter, with the exception of subsection (e) of § 1-608.01 and subsection (d) of § 1-608.01a.

(e) Employees hired on or after the date that this chapter becomes effective as provided in § 1-636.02 shall be governed by all the provisions of this chapter without exception.

(Mar. 3, 1979, D.C. Law 2-139, § 204, 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 21(b), 27 DCR 2632.)

Section references. — This section is referred to in §§ 1-602.05, 1-602.06, 1-603.01, 1-608.01, and 1-617.16.

Prior Codifications. — 1981 Ed., § 1-602.4.

1973 Ed., § 1-332.4.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 3-81. — For legislative history of D.C. Law 3-81, see Historical and Statutory Notes following § 1-602.02.

References in text. — Section 1-609.09, referenced in (c), was repealed by D.C. Law 12-260, § 2(f), 46 DCR 1318, effective April 20, 1999.

CASE NOTES

ANALYSIS

Attorney fees.

Construction and application.

Construction with other laws.

Interest on back pay.

Attorney fees.

Entitlement to attorney fees, available under former federal civil service scheme, survived for District of Columbia employee who successfully litigated personnel action and who was hired before District superseded those portions of federal scheme in Comprehensive Merit Personnel Act. D.C. Code 1981, §§ 1-201 et seq., 1-601.1 et seq. *District of Columbia v. Hunt*, 520 A.2d 300, 1987 D.C. App. LEXIS 275 (1987).

Construction and application.

Employees of the District of Columbia Department of Corrections are not entitled to federal competitive employment status by virtue of fact that some federal prisoners are committed to District of Columbia prisons, in light of the D.C. Comprehensive Merit Personnel Act which established a municipal personnel system apart from that of the federal government. *Lucas v. United States*, 268 F.3d 1089, 2001 U.S. App. LEXIS 23589 (C.A.D.C. 2001).

Director of Legislative Services Division of Council of District of Columbia, who occupied DS-13 position, was not member of career service who could be discharged only for cause. D.C. Code 1981, § 1-602.4(c) *Council of District of Columbia v. Clay*, 683 A.2d 1385, 1996 D.C.

App. LEXIS 229 (1996), writ of certiorari denied by 520 U.S. 1169, 117 S. Ct. 1434, 137 L. Ed. 2d 542, 1997 U.S. LEXIS 2277, 65 U.S.L.W. 3692 (1997).

Construction with other laws.

Home Rule Act provision barring the D.C. Council from amending Title 24 of the D.C. Code for four years did not trump applicability of the D.C. Comprehensive Merit Personnel Act to employees of the District of Columbia Department of Corrections, so as to preserve their status as federal employees; four-year bar was limited to criminal laws and criminal procedure, and had nothing to do with employee personnel rights or benefits. *Lucas v. United States*, 268 F.3d 1089, 2001 U.S. App. LEXIS 23589 (C.A.D.C. 2001).

Read together, the Home Rule Act and Comprehensive Merit Personnel Act (CMPA) reflect congressional and District of Columbia policies that the District's personnel system is to be autonomous and separate from the federal system and that employees who were hired before 1980 could be given only those concrete entitlements or personnel benefits which were available, and to which they were entitled, before 1980. D.C. Code 1981, §§ 1-201 et seq., 1-601 et seq. *District of Columbia v. Brown*, 739 A.2d 832, 1999 D.C. App. LEXIS 255 (1999).

Nothing in the Home Rule Act nor Comprehensive Merit Personnel Act (CMPA) mandates the continuing applicability of future federal benefits provided by subsequent amendments to District of Columbia employees. D.C. Code 1981, §§ 1-201 et seq., 1-601 et seq. *District of*

Columbia v. Brown, 739 A.2d 832, 1999 D.C. App. LEXIS 255 (1999).

Interest on back pay.

Amendment to Federal Back Pay Act (FBPA), which provided interest on back pay awards, did not entitle a pre-1980 District of Columbia employee to interest on his back pay award; the Home Rule Act and Comprehensive Merit Personnel Act (CMPA) guaranteed pre-1980 District employees only those rights to which they were entitled immediately prior to 1980, and

interest on back pay awards under the FBPA was not one of those rights. 5 U.S.C. § 5596(b)(2)(a); D.C. Code 1981, §§ 1-201 et seq., 1-601 et seq. *District of Columbia v. Brown*, 739 A.2d 832, 1999 D.C. App. LEXIS 255 (1999).

District of Columbia employees, including those hired before 1980, are not entitled to interest on back pay awarded under Federal Back Pay Act (FBPA). 5 U.S.C. § 5596(b)(2)(a). *District of Columbia v. Brown*, 739 A.2d 832, 1999 D.C. App. LEXIS 255 (1999).

§ 1-602.05. Development of new personnel system.

In accordance with the provisions of § 1-602.04, the Mayor and each personnel authority shall cause the development of unified systems for all employees of the District of Columbia government. Each employee of the District of Columbia government employed on December 31, 1979, shall be guaranteed no reduction of current pay and benefits except as provided in subchapter XXIV of this chapter.

(Mar. 3, 1979, D.C. Law 2-139, § 205, 25 DCR 5740.)

Prior Codifications. — 1981 Ed., § 1-602.5.

1973 Ed., § 1-332.5.

Legislative history of Law 2-139. — For

legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

CASE NOTES

Due Process.

Although District of Columbia Comprehensive Merit Personnel Act (CMPA) provided exclusive avenue for aggrieved District employees to pursue work-related complaints, CMPA did not foreclose court from entertaining District employee's claim that District and District offi-

cials violated her due process rights by allegedly terminating her worker's compensation benefits. *Deschamps v. District of Columbia*, 582 F.Supp.2d 14, 2008 U.S. Dist. LEXIS 85539 (2008), dismissed by 2009 U.S. Dist. LEXIS 3788 (D.D.C. Jan. 21, 2009).

§ 1-602.06. Supersession provisions; effectiveness of collective bargaining on compensation matters.

On the date that the provisions of § 1-617.16 become operational and negotiations commence concerning compensation matters, all employees of the District government in the appropriate bargaining units under § 1-617.16, including those described in § 1-602.04, shall be subject to the procedures and provisions for establishing compensation provided in § 1-617.16: Provided, however, that no employee subject to the provisions of § 1-602.04 shall be reduced in actual pay, except in accordance with the provisions of subchapter XXIV of this chapter.

(Mar. 3, 1979, D.C. Law 2-139, § 206, 25 DCR 5740.)

Cross references. — Merit system, effective date provisions, see § 1-636.02.

Organization for personnel management, rules and regulations, see § 1-604.04.

Rent stabilization program, rent administrator, qualifications and compensation, see § 42-3502.01.

Section references. — This section is referred to in § 1-617.17.

Prior Codifications. — 1981 Ed., § 1-602.6.

1973 Ed., § 1-332.6.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

CASE NOTES

Due Process.

Although District of Columbia Comprehensive Merit Personnel Act (CMPA) provided exclusive avenue for aggrieved District employees to pursue work-related complaints, CMPA did not foreclose court from entertaining District employee's claim that District and District offi-

cials violated her due process rights by allegedly terminating her worker's compensation benefits. *Deschamps v. District of Columbia*, 582 F.Supp.2d 14, 2008 U.S. Dist. LEXIS 85539 (2008), dismissed by 2009 U.S. Dist. LEXIS 3788 (D.D.C. Jan. 21, 2009).

Subchapter III. Definitions.

§ 1-603.01. Definitions.

For the purpose of this chapter unless otherwise required by the context:

(1) The term "agency" means any unit of the District of Columbia government required by law, by the Mayor of the District of Columbia, or by the Council of the District to administer any law, rule, or any regulation adopted under authority of law. The term "agency" shall also include any unit of the District of Columbia government created by the reorganization of 1 or more of the units of an agency and any unit of the District of Columbia government created or organized by the Council of the District of Columbia as an agency.

(2) The term "boards and commissions" means bodies established by law or by order of the Mayor of the District of Columbia consisting of appointed members to perform a trust or execute official functions on behalf of the District of Columbia government. Compensation or reimbursement of expenses, if any, to such members shall be provided according to § 1-611.08; provided, however, that full-time employees shall be paid in accordance with the provisions of § 1-611.04 or § 1-611.11.

(3) The term "Career Service" means positions in the District of Columbia government as provided for in subchapter VIII of this chapter and § 1-602.04.

(4) The term "Council" means the Council of the District of Columbia, created pursuant to § 1-204.01.

(5) The term "District" means the District of Columbia government (D.C. Official Code § 1-102).

(5A) The term "domestic partner" shall have the same meaning as provided in § 32-701(3).

(5B) The term "domestic partnership" shall have the same meaning as provided in § 32-701(4).

(5C) The term "domicile" means:

(A) Physical presence in the District of Columbia; and

(B) An intent to abandon any and all former domiciles and remain in the District of Columbia during the duration of the appointment.

(6) The term “educational employee” means an employee of the District of Columbia Board of Education or of the Board of Trustees of the University of the District of Columbia, except persons employed in any of the following types of positions:

(A) Clerical, stenographic, or secretarial positions;

(B) Custodial, building maintenance, building engineer, general maintenance, or general engineering positions;

(C) Bus drivers and other drivers involved in the transportation of persons, equipment, materials or inventory;

(D) Cooks, dieticians, and other positions involved in direct planning, preparation, service, and conditions of preparation and service of food;

(E) Technicians involved in the operation or maintenance of machinery, vehicles, equipment or the processing of materials and inventory; or

(F) Positions the major duties in which consist of the supervision of employees covered in subparagraphs (A) through (E) of this definition: provided, however, that this subparagraph shall not be deemed to include heads of academic units at the School of Law or the University of the District of Columbia.

(7) The term “employee” means, except when specifically modified in this chapter, an individual who performs a function of the District government and who receives compensation for the performance of such services.

(8) The term “Excepted Service” means positions in the District of Columbia government as provided for in subchapter IX of this chapter.

(8A) The term “exceptional circumstances” means conditions or facts that are uncommon, deviate from or do not conform to the norm, or are beyond willful control, which are presented to the personnel authority by an agency hiring an individual to fill a position in the Excepted and Executive Services, and which shall be considered by the personnel authority in determining the reasonableness of granting a waiver of the domicile requirement pursuant to §§ 1-609.06 and 1-610.59.

(9) The term “Executive Service” means any subordinate agency head whom the Mayor is authorized to appoint in accordance with subchapter X-A of this chapter.

(9A) “Gender identity or expression” shall have the same meaning as provided in § 2-1401.02(12A).

(10) The term “grievance” means any matter under the control of the District government which impairs or adversely affects the interest, concern, or welfare of employees, but does not include adverse actions resulting in removals, suspension of 10 days or more, or reductions in grade, reductions in force or classification matters. This definition applies to matters which are subject to procedures established pursuant to section § 1-616.53 and is not intended to restrict matters that may be subject to a negotiated grievance and arbitration procedure in a collective bargaining agreement between the District and a labor organization representing employees.

(10A) The term “hard to fill position” means a position so designated by the personnel authority on the basis of demonstrated recruitment and retention problems inherent in the position due to the uniqueness of the duties and

responsibilities and the unusual combination of highly specialized qualification requirements for the position.

(11) The term “head” means the highest ranking executive official of an agency.

(12) The term “holidays” means any day established as a legal holiday pursuant to subchapter XII of this chapter.

(13) The term “independent agency” means any board or commission of the District of Columbia government not subject to the administrative control of the Mayor, including, the Board of Trustees of the University of the District of Columbia, the Board of Library Trustees, the Armory Board, the Board of Elections and Ethics, the Public Service Commission, the Zoning Commission for the District of Columbia, the Public Employee Relations Board, the District of Columbia Retirement Board, and the Office of Employee Appeals. For the purposes of this chapter, the Council of the District of Columbia shall be considered an independent agency of the District of Columbia. For the purposes of subchapter XXVIII of this chapter, the Washington Metropolitan Area Transit Commission shall be considered an independent agency of the District.

(13A) The term “Legal Service” means positions in the District of Columbia government as provided for in subchapter VIII-B of this chapter.

(13B) The term “Management Supervisory Service” means positions in the District of Columbia government as provided for in subchapter IX-A of this chapter.

(13C) The term “nonschool-based personnel” means any employee of the District of Columbia Public Schools who is not based at a local school or who does not provide direct services to individual students.

(14) The term “personnel authority” means an individual with the authority to administer all or part of a personnel management program as provided in subchapter IV of this chapter.

(14A) “Public official” means:

(A) A candidate for nomination for election, or election, to public office;

(B) The Mayor, Chairman, and each member of the Council of the District of Columbia holding office under D.C. Code Chapter 2 of this title [§ 1-201.01 et seq.];

(C) The Attorney General;

(D) A Representative or Senator elected pursuant to § 1-123;

(E) An Advisory Neighborhood Commissioner;

(F) A member of the State Board of Education;

(G) A person serving as a subordinate agency head in a position designated as within the Executive Service;

(H) A member of a board or commission listed in § 1-523.01(e); and

(I) A District of Columbia Excepted Service employee paid at a rate of Excepted Service 9 or above, or its equivalent, who makes decisions or participates substantially in areas of contracting, procurement, administration of grants or subsidies, developing policies, land use planning, inspecting, licensing, regulating, or auditing, or acts in areas of responsibility that may create a conflict of interest or the appearance of a conflict of interest; and any

additional employees designated by rule by the Ethics Board who make decisions or participate substantially in areas of contracting, procurement, administration of grants or subsidies, developing policies, land use planning, inspecting, licensing, regulating, or auditing, or act in areas of responsibility that may create a conflict of interest or the appearance of a conflict of interest.

(15) The term "resident" means any person who is a domiciliary of the District of Columbia and who throughout his or her employment by the District maintains a place of abode in the District of Columbia as his or her actual, regular, and principal place of occupancy.

(15A) The term "school administrators" means principals, assistant principals, school program directors, coordinators, instructional supervisors, and support personnel of the District of Columbia Public Schools.

(16) The term "standard" means any criterion, guideline, or measure established by appropriate authority for the purpose of making objective comparisons or determinations for such purposes, including, but not limited to, the classification of positions, establishment of pay, evaluation of qualifications, and appraisal of work performance.

(17) The term "subordinate agency" means any agency under the direct administrative control of the Mayor, including, but not limited to, the following:

- (A) Office of Operations (Mayor's Order 83-17);
- (B) Office of Economic Development (Mayor's Order 83-18);
- (C) Office of Financial Management (Mayor's Order 83-19);
- (D) Office of the Corporation Counsel (Reorganization Order 50);
- (E) Department of Corrections (Organization Order 7);
- (F) Department of Public Works (Reorganization Plan No. 4 of 1983);
- (G) Department of Finance and Revenue (Commissioner's Order 69-96);
- (H) Fire and Emergency Medical Services Department (Reorganization Order 6);
- (I) Department of Administrative Services (Reorganization Plan No. 5 of 1983);
- (J) Department of Housing and Community Development (Reorganization Plan 3 of 1975);
- (K) Repealed;
- (L) Metropolitan Police force (D.C. Official Code, § 5-105.05);
- (M) Department of Parks and Recreation (Organization Order 10);
- (N) Department of Human Services (Reorganization Plan No. 2 of 1979 and Mayor's Reorganization Plan No. 3 of 1986), including:
 - (i) The Commission on Social Services;
 - (ii) Repealed;
 - (iii) Repealed; and
 - (iv) Repealed;
- (O) Department of Employment Services (Reorganization Plan No. 1 of 1980);
- (P) Department of Consumer and Regulatory Affairs (Reorganization Plan No. 1 of 1983);
- (Q) Homeland Security and Emergency Management Agency (Commissioner's Order 74-261) [D.C. Code § 7-2551 et seq.];

- (R) Office of Human Rights;
- (S) Office of Personnel (D.C. Official Code, § 1-604.02);
- (T) Office on Latino Affairs (D.C. Official Code, § 2-1311);
- (U) Office on Aging (D.C. Official Code, § 7-503.01);
- (V) Repealed;
- (W) Board of Parole (Organization Order 6);
- (X) Repealed;
- (Y) Office of Business and Economic Development (D.C. Code, § 2-1201.02);
- (Z) Office of the Secretary of the District of Columbia (Mayor's Order 84-77);
- (AA) Office of Inspector General (D.C. Code, § 1-301.115a);
- (BB) Repealed;
- (CC) Repealed;
- (DD) Office of Cable Television (D.C. Code, § 34-1205 [repealed]);
- (EE) Repealed;
- (FF) Repealed;
- (GG) Repealed;
- (HH) Office of the Budget (Mayor's Order 79-5);
- (II) Repealed;
- (JJ) Repealed;
- (KK) Repealed;
- (LL) Commission on the Arts and Humanities;
- (MM) Department of Health;
- (NN) Office of Contracting and Procurement;
- (OO) Repealed;
- (PP) Department of Insurance, Securities, and Banking;
- (QQ) Repealed;
- (RR) Office of the Chief Technology Officer;
- (SS) Department of Motor Vehicles;
- (TT) Office of Planning (Mayor's Order 83-25);
- (UU) Office of Local Business Development;
- (VV) Office of Deputy Mayor for Planning and Economic Development;
- (WW) Office of the Chief Medical Examiner;
- (XX) Child and Family Services Agency;
- (YY) Department of Mental Health;
- (ZZ) District Department of Transportation;
- (AAA) Office of Unified Communications;
- (BBB) Department of Youth Rehabilitation Services;
- (CCC) The Office of Risk Management, established by Reorganization Plan No. 1 of 2003;
- (DDD) Department on Disability Services; and
- (EEE) District of Columbia Public Schools.

(Mar. 3, 1979, D.C. Law 2-139, § 301, 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(c), 27 DCR 2632; Feb. 24, 1987, D.C. Law 6-177, § 3(d), 33 DCR 7241; Mar. 16, 1989, D.C. Law 7-201, § 2, 36 DCR 248; Mar. 24, 1990, D.C. Law 8-97,

§ 3(a), 37 DCR 1046; Sept. 26, 1995, D.C. Law 11-52, § 801(a), 42 DCR 3684; Mar. 5, 1996, D.C. Law 11-98, § 301(a), 43 DCR 5; Jan. 26, 1996, D.C. Law 11-78, § 501(a), 42 DCR 6181; Sept. 26, 1996, D.C. Law 11-52, § 1001(a), 42 DCR 3684; Apr. 26, 1996, 110 Stat. 215, Pub. L. 104-134, § 145(1); Aug. 1, 1996, D.C. Law 11-152, § 302(c), 43 DCR 2978; Sept. 9, 1996, 110 Stat. 2372, Pub. L. 104-194, § 138(1); Apr. 9, 1997, D.C. Law 11-255, § 4(a), 44 DCR 1271; Aug. 5, 1997, 111 Stat. 760, Pub. L. 105-33, § 11261(b)(2); June 10, 1998, D.C. Law 12-124, § 101(a), 45 DCR 2464; Mar. 26, 1999, D.C. Law 12-175, §§ 1807, 1817, 1828, 45 DCR 7193; Apr. 20, 1999, D.C. Law 12-264, §§ 5(a), 53, 46 DCR 2118; June 12, 1999, D.C. Law 12-285, § 3, 46 DCR 1355; Oct. 20, 1999, D.C. Law 13-38, §§ 208 and 225, 46 DCR 6373; Apr. 12, 2000, D.C. Law 13-91, § 103(b), 47 DCR 520; Oct. 19, 2000, D.C. Law 13-172, §§ 1902 and 2919(a), 47 DCR 6308; Apr. 4, 2001, D.C. Law 13-277, § 3(b)(1), 48 DCR 2043; June 19, 2001, D.C. Law 13-313, § 2(a) 48 DCR 1873; Dec. 18, 2001, D.C. Law 14-56, § 116(a)(1), 48 DCR 7674; May 21, 2002, D.C. Law 14-137, § 10, 49 DCR 3444; Oct. 1, 2002, D.C. Law 14-185, § 2(a), 49 DCR 6073; Oct. 19, 2002, D.C. Law 14-213, § 3(a), 49 DCR 8140; Mar. 13, 2004, D.C. Law 15-105, §§ 2(a), 19(a), 20(d), 51 DCR 881; June 11, 2004, D.C. Law 15-166, § 4(a), 51 DCR 2817; Dec. 7, 2004, D.C. Law 15-205, § 3221, 51 DCR 8441; Apr. 12, 2005, D.C. Law 15-335, § 201, 52 DCR 2025; Apr. 13, 2005, D.C. Law 15-354, § 5(a), 52 DCR 2638; Apr. 7, 2006, D.C. Law 16-91, §§ 113, 117, 118(a), 52 DCR 10637; Mar. 2, 2007, D.C. Law 16-191, § 116, 53 DCR 6794; Mar. 14, 2007, D.C. Law 16-262, § 401, 54 DCR 794; Mar. 14, 2007, D.C. Law 16-264, § 201, 54 DCR 818; June 12, 2007, D.C. Law 17-9, § 1001, 54 DCR 4102; June 25, 2008, D.C. Law 17-177, § 3(b), 55 DCR 3696; Sept. 12, 2008, D.C. Law 17-231, § 3(a), 55 DCR 6758; Mar. 25, 2009, D.C. Law 17-353, §§ 157(e), 176, 203(c), 248, 56 DCR 1117; Sept. 14, 2011, D.C. Law 19-21, § 1032(a), 58 DCR 6226; Apr. 27, 2012, D.C. Law 19-124, § 501(c)(1), 59 DCR 1862.)

Cross references. — Business improvements districts, additional authority and duties, see § 2-1215.16.

Construction codes, see § 6-1401 et seq.

Employees retirement program management, establishment of retirement board and retirement funds, see § 1-711.

Spouse equity, “employee” defined, see § 1-529.02.

Section references. — This section is referred to in §§ 1-612.04, 1-612.31, 3-101, and 22-

Prior Codifications. — 1981 Ed., § 1-603.1.

1973 Ed., § 1-333.1.

Effect of amendments. — D.C. Law 13-38, in subsec. (17), deleted “(Commissioner’s Order 71-224)” from the end of par. (R), and added par. (UU) to read “Office of Local Business Development”.

D.C. Law 13-91, in subsec. (9), substituted “subchapter XI-A” for “subchapter XI”; in subsec. (10), in the second sentence, substituted “1-617.53” for “1-617.3”; redesignated for-

mer subsec. (13A) as subsec. (13B); and inserted new subsec. (13A) defining “Legal Service”.

D.C. Law 13-172, in subsec. (17), added par. (VV) to read “Office of Deputy Mayor for Planning and Economic Development”, and par. (WW) to read “Office of the Chief Medical Examiner”.

D.C. Law 13-277, in subsec. (17), added par. (XX).

D.C. Law 13-313, in subsec. (17), par. (Q), substituted “Emergency Management Agency” for “Office of Emergency Preparedness”.

D.C. Law 14-56, in subsec. (17), repealed par. (N)(iii), which had read: “The Commission on Mental Health; and”, struck “and” at the end of par. (WW), substituted “; and” for a period at the end of par. (XX), and added par. (YY).

D.C. Law 14-137, in par. (17)(WW), made a nonsubstantive change; in par. (17)(YY), substituted “Child and Family Services; and” for “Child and Family Services.”; and added par. (17)(ZZ).

D.C. Law 14-185 added pars. (5A), (8A), and (10A).

D.C. Law 14-213 redesignated par. (13B) as (13C); added a new par. (13B); and in par. (19)(M), substituted "Department of Parks and Recreation" for "Department of Recreation and Parks".

D.C. Law 15-105, in subpar. (T) of par. (17), substituted "Office on Latino Affairs" for "Office of Latino Affairs"; and, in pars. (8A), (10A), (50), (51), and (52), validated previously made technical corrections.

D.C. Law 15-166, in par. (17), repealed subpar. (JJ), and rewrote subpar. (PP).

D.C. Law 15-205, in par. (17), made nonsubstantive changes in subpars. (YY) and (ZZ), and added subpar. (AAA).

D.C. Law 15-335, in par. (17), substituted a semicolon for "and" at the end of subpar. (ZZ), substituted a period for "; and" at the end of subpar. (AAA), and added subpar. (BBB).

D.C. Law 15-354, in par. (17), repealed subpar. (v) which had read as follows: "(V) Board of Appeals and Review (Organization Order 112);", validated a previously made correction at the end of subpar. (YY), inserted "District" and "; and" in subpar. (ZZ), and added subpar. (CCC).

D.C. Law 16-91, in par. (17), validated previously made technical corrections in subpars. (ZZ), (AAA), (BBB), (CCC), and repealed subpars. (N)(iv) and (OO).

D.C. Law 16-191, in subpars. (AAA) and (BBB) of par. (17), validated previously made technical corrections.

D.C. Law 16-262, in par. (17), subpar. (Q), substituted "Homeland Security and Emergency Management Agency" for "Emergency Management Agency".

D.C. Law 16-264, in par. (17), added subpar. (DDD).

D.C. Law 17-9, in par. (13), deleted "but not limited to, the District of Columbia Board of Education" following "including."; and, in par. (17), added subpar. (EEE).

D.C. Law 17-177 added subsec. (9A).

D.C. Law 17-231 redesignated par. (5A) as par. (5C); and added pars. (5A) and (5B).

D.C. Law 17-353, in par. (17), subpar. (Q), inserted "(Commissioner's Order 74-261)", rewrote subpar. (DD), which had read as follows: "(DD) Office of Cable Television (D.C. Official Code, § 34-1205);", and validated previously made technical corrections in subpars. (AAA), (BBB), (CCC), (DDD), and (EEE).

D.C. Law 19-21 repealed subsec. (17)(QQ), which had read as follows: "(QQ) Office of Property Management;".

D.C. Law 19-124 added par. (14A).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 5 of Human Services Spending Reduction Temporary Amendment Act of 1995 (D.C. Law 11-29, July 25, 1995, law notification 42 DCR 4002).

For temporary (225 day) amendment of section, see § 16(a)(1) of Department of Mental Health Establishment Temporary Amendment Act of 2001 (D.C. Law 14-51, October 30, 2001, law notification 48 DCR 10807).

Emergency legislation. — For temporary amendment of section, see §§ 1407, 1417, and 1428 of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), and §§ 1407, 1417, and 1428 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

For temporary amendment of section, see § 3 of the Confirmation Emergency Amendment Act of 1999 (D.C. Act 13-25, March 15, 1999, 46 DCR 2971).

For temporary (90-day) amendment of section, see §§ 1407, 1417, and 1428 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1999 (D.C. Act 13-41, March 31, 1999, 46 DCR 3446).

For temporary (90-day) amendment of section, see § 3 of the Confirmation Act Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-92, June 4, 1999, 46 DCR 5330).

For temporary (90-day) amendment of section, see §§ 208 and 225 of the Service Improvement and Fiscal Year 2000 Budget Support Emergency Act of 1999 (D.C. Act 13-110, July 28, 1999, 46 DCR 6320).

For temporary (90-day) amendment of section, see § 2(a) of the Legal Services Clarification and Technical Emergency Amendment Act of 1999 (D.C. Act 13-203, December 8, 1999, 46 DCR 10456).

For temporary (90-day) amendment of section, see § 2(a) of the Legal Services Clarification and Technical Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-293, March 7, 2000, 47 DCR 2063).

For temporary (90-day) addition of section, see §§ 1902 and 2919(a) of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see §§ 1902, 1903, and 2919(a) of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

For temporary (90 day) amendment of section, see § 16(a)(1) of Department of Mental Health Establishment Emergency Amendment Act of 2001 (D.C. Act 14-55, May 2, 2001, 48 DCR 4390).

For temporary (90 day) amendment of section, see § 16(a)(1) of Department of Mental Health Establishment Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-101, July 23, 2001, 48 DCR 7123).

For temporary (90 day) amendment of section, see § 116(a)(1) of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

For temporary (90 day) amendment of section, see § 4(a) of Consolidation of Financial Services Emergency Amendment Act of 2004 (D.C. Act 15-381, February 27, 2004, 51 DCR 2652).

For temporary (90 day) amendment of section, see § 3221 of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 3221 of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

For temporary (90 day) amendment of section, see § 201 of Department of Youth Rehabilitation Services Establishment Emergency Act of 2004 (D.C. Act 15-657, December 29, 2004, 52 DCR 481).

For temporary (90 day) amendment of section, see § 201 of Department of Youth Rehabilitation Services Establishment Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-58, March 17, 2005, 52 DCR 3182).

For temporary (90 day) amendment of section, see § 201 of Developmental Disabilities Services Management Reform Emergency Amendment Act of 2006 (D.C. Act 16-672, December 28, 2006, 54 DCR 1155).

For temporary (90 day) amendment of section, see § 401(c)(1) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 3-81. — For legislative history of D.C. Law 3-81, see Historical and Statutory Notes following § 1-602.02.

Legislative history of Law 6-177. — For legislative history of D.C. Law 6-177, see Historical and Statutory Notes following § 1-601.02.

Legislative history of Law 7-201. — Law 7-201 was introduced in Council and assigned Bill No. 7-95, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 15, 1988 and November 29, 1988, respectively. Signed by the Mayor on December 23, 1988, it was assigned Act No. 7-271 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-97. — Law 8-97 was introduced in Council and assigned

Bill No. 8-267, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 19, 1989, and January 16, 1990, respectively. Signed by the Mayor on January 26, 1990, it was assigned Act No. 8-149 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-52. — Law 11-52, the "Omnibus Budget Support Act of 1995," was introduced in Council and assigned Bill No. 11-218, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 19, 1995, and June 6, 1995, respectively. Signed by the Mayor on July 13, 1995, it was assigned Act No. 11-94 and transmitted to both Houses of Congress for its review. D.C. Law 11-52 became effective on September 26, 1995.

Legislative history of Law 11-78. — For legislative history of D.C. Law 11-78, see Historical and Statutory Notes following § 1-624.07.

Legislative history of Law 11-98. — For legislative history of D.C. Law 11-98, see Historical and Statutory Notes following § 1-624.07.

Legislative history of Law 11-152. — For legislative history of D.C. Law 11-152, see Historical and Statutory Notes following § 1-602.02.

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Legislative history of Law 12-124. — Law 12-124, the "Omnibus Personnel Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-44, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on February 3, 1998, and March 17, 1998, respectively. Signed by the Mayor on April 1, 1998, it was assigned Act No. 12-326 and transmitted to both Houses of Congress for its review. D.C. Law 12-124 became effective on June 10, 1998.

Legislative history of Law 12-175. — Law 12-175, the "Fiscal Year 1999 Budget Support Act of 1998," was introduced in Council and assigned Bill No. 12-618, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 5, 1998, and June 2, 1998, respectively. Signed by the Mayor on June 23, 1998, it was assigned Act No. 12-399 and transmitted to both Houses

of Congress for its review. D.C. Law 12-175 became effective on March 26, 1999.

Legislative history of Law 12-285. — Law 12-285, the “Confirmation Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-261. The Bill was adopted on first and second readings on November 10, 1998, and December 29, 1998, respectively. Signed by the Mayor on January 5, 1999, it was assigned Act No. 12-622 and transmitted to both Houses of Congress for its review. D.C. Law 12-285 became effective on June 12, 1999.

Legislative history of Law 12-264. — Law 12-264, the “Technical Amendments Act of 1998,” was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

Legislative history of Law 13-38. — Law 13-38, the “Service Improvement and Fiscal Year 2000 Budget Support Act of 1999,” was introduced in Council and assigned Bill No. 13-161, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 11, 1999, and June 22, 1999, respectively. Signed by the Mayor on July 8, 1999, it was assigned Act No. 13-111 and transmitted to both Houses of Congress for its review. D.C. Law 13-38 became effective on October 20, 1999.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-602.03.

Legislative history of Law 13-172. — Law 13-172, the “Fiscal Year 2001 Budget Support Act of 2000,” was introduced in Council and assigned Bill No. 13-679, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 18, 2000, and June 6, 2000, respectively. Signed by the Mayor on June 26, 2000, it was assigned Act No. 13-375 and transmitted to both Houses of Congress for its review. D.C. Law 13-172 became effective on October 19, 2000.

Legislative history of Law 13-313. — For Law 13-313, see notes following § 1-307.67.

Legislative history of Law 13-277. — Law 13-277, the “Child and Family Services Agency Establishment Amendment Act of 2000,” was introduced in Council and assigned Bill No. 13-796, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on December 5, 2000, and December 19, 2000, respectively. Signed by the Mayor on January 24, 2001, it was assigned Act No. 13-590 and transmitted to both Houses of Congress for its review. D.C. Law 13-277 became effective on April 4, 2001.

Legislative history of Law 14-56. — Law 14-56, the “Mental Health Service Delivery Reform Act of 2001,” was introduced in Council and assigned Bill No. 14-136, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 26, 2001, and July 10, 2001, respectively. Signed by the Mayor on July 24, 2001, it was assigned Act No. 14-119 and transmitted to both Houses of Congress for its review. D.C. Law 14-56 became effective on December 18, 2001.

Legislative history of Law 14-137. — Law 14-137, the “Department of Transportation Establishment Act of 2002,” was introduced in Council and assigned Bill No. 14-343, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on February 19, 2002, and March 5, 2002, respectively. Signed by the Mayor on March 26, 2002, it was assigned Act No. 14-313 and transmitted to both Houses of Congress for its review. D.C. Law 14-137 became effective on May 21, 2002.

Legislative history of Law 14-185. — Law 14-185, the “Excepted and Executive Service Domicile Requirement Amendment Act of 2002,” was introduced in Council and assigned Bill No. 14-592, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on May 7, 2002, and June 4, 2002, respectively. Signed by the Mayor on June 21, 2002, it was assigned Act No. 14-387 and transmitted to both Houses of Congress for its review. D.C. Law 14-185 became effective on October 1, 2002.

Legislative history of Law 14-213. — Law 14-213, the “Technical Amendments Act of 2002,” was introduced in Council and assigned Bill No. 14-671, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 4, 2002, and July 2, 2002, respectively. Signed by the Mayor on July 26, 2002, it was assigned Act No. 14-459 and transmitted to both Houses of Congress for its review. D.C. Law 14-213 became effective on October 19, 2002.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 1-301.47.

Legislative history of Law 15-166. — Law 15-166, the “Consolidation of Financial Services Amendment Act of 2004,” was introduced in Council and assigned Bill No. 15-518, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on January 6, 2004, and February 3, 2004, respectively. Signed by the Mayor on February 27, 2004, it was assigned Act No. 15-385 and transmitted to both Houses of Congress for its review. D.C. Law 15-166 became effective on June 11, 2004.

Legislative history of Law 15-205. — For Law 15-205, see notes following § 1-204.42.

Legislative history of Law 15-335. — Law 15-335, the “Department of Youth Rehabilitation Services Establishment Act of 2004”, was introduced in Council and assigned Bill No. 15-749 which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on December 7, 2004, and December 21, 2004, respectively. Signed by the Mayor on January 21, 2005, it was assigned Act No. 15-749 and transmitted to both Houses of Congress for its review. D.C. Law 15-335 became effective on April 12, 2005.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 1-523.01.

Legislative history of Law 16-91. — For Law 16-91, see notes following § 1-301.45.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 1-325.44.

Legislative history of Law 16-262. — For Law 16-262, see notes following § 1-523.01.

Legislative history of Law 16-264. — Law 16-264, the “Developmental Disabilities Service Management Reform Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-334, which was referred to Committee on Human Services. The Bill was adopted on first and second readings on December 5, 2006, and December 19, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-620 and transmitted to both Houses of Congress for its review. D.C. Law 16-264 became effective on March 14, 2007.

Legislative history of Law 17-9. — Law 17-9, the “Public Education Reform Amendment Act of 2007”, was introduced in Council and assigned Bill No. 17-1, which was referred to Committee of the Whole. The Bill was adopted on first and second readings on April 3, 2007, and April 19, 2007, respectively. Signed by the Mayor on April 23, 2007, it was assigned Act No. 17-38 and transmitted to both Houses of Congress for its review. D.C. Law 17-9 became effective on June 12, 2007.

Legislative history of Law 17-177. — For Law 17-177, see notes following § 1-309.01.

Legislative history of Law 17-231. — For Law 17-231, see notes following § 1-301.45.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 1-129.05.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 1-301.01.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

References in text. — Pursuant to the Office of the Chief Financial Officer’s “Notice of Public Interest” published in the April 18, 1997, issue of the District of Columbia Register (44 DCR 2345) the Office of Tax and Revenue assumed all of the duties and functions previously performed by the Department of Finance and Revenue, as set forth in Commissioner’s Order 69-96, dated March 7, 1969. This action was made effective January 22, 1997, nunc pro tunc.

Pursuant to Mayor’s Order 98-198 (46 DCR 240) pub. January 8, 1999, the name of the Office of Emergency Preparedness has been changed to the D.C. Emergency Management Agency.

Pursuant to Mayor’s Order 2000-20, the agency formerly known as the Department of Recreation and Parks shall be known as the Department of Parks and Recreation.

Mayor’s Orders. — Amendment of Organization Order No. 112, establishing Board of Appeals and Review: See Mayor’s Order 84-31, February 9, 1984.

Editor’s notes. — Repeal of § 3 of Law 6-177: Section 4(b) of D.C. Law 6-177 provided that the provisions of § 3 are repealed on the 1st day following the 36-month period after February 24, 1987.

Repeal of § 4(b) of Law 6-177: Section 3(b) of D.C. Law 8-74, effective March 15, 1990, provided that § 4(b) of D.C. Law 6-177 is repealed.

Applicability: Section 1011 of Law 17-9 provided that this title shall apply upon Congressional enactment of Title IX. Congress enacted the provisions of Title IX in Pub. L. 110-33, approved June 1, 2007.

CASE NOTES

ANALYSIS

Career service.

Damages.

Educational employee.

Employee.

Exhaustion of administrative remedies.

Grievances.

Independent agency.

Personnel authority.

Personnel issues.

Pleadings.

Career service.

Existence of either one or two personnel forms indicating that deputy procurement officer for university was career employee did not affect university’s determination that officer was member of the Educational Service, as opposed to Career Service, for purposes of District of Columbia Comprehensive Merit Personnel Act (CMPA), and thus, absence of second form from record was ultimately irrelevant; presence of computer printed “1” in box on form, thereby indicating that officer was in the Ca-

reer Service, was typographical error. D.C. Code 1981, §§ 1-603.1(6), 1-608.1(a). *Hoage v. Board of Trustees of the Univ. of the District of Columbia*, 714 A.2d 776, 1998 D.C. App. LEXIS 120 (1998).

Damages.

Mere demand for punitive damages eliminates the need for an employee to exhaust his or her remedies under the District of Columbia Comprehensive Merit Personnel Act (CMPA). *Payne v. District of Columbia*, 592 F.Supp.2d 29, 2008 U.S. Dist. LEXIS 104901 (2008).

Educational employee.

Deputy procurement officer for university was in the Educational Service, as opposed to the Career Service, for purposes of District of Columbia Comprehensive Merit Personnel Act (CMPA); fact that procurement officer may have supervised a relatively small number of clerical employees in course of his job duties did not mean that he fell within Career Service as a matter of law. D.C. Code 1981, §§ 1-603.1(6)(F), 1-608.1(a). *Hoage v. Board of Trustees of the Univ. of the District of Columbia*, 714 A.2d 776, 1998 D.C. App. LEXIS 120 (1998).

Employee.

Rejected applicant for employment is not a person who performs a District of Columbia government function or who receives compensation for performing one for purposes of the Comprehensive Merit Personnel Act (CMPA) which defines "employee" as an individual who performs a function of the District government and who receives compensation for the performance of such services. D.C. Code 1981, § 1-603.1(7). *Grillo v. District of Columbia*, 731 A.2d 384, 1999 D.C. App. LEXIS 127 (1999).

Exhaustion of administrative remedies.

Former District of Columbia elevator inspector's claim that District and his supervisors conspired to interfere with his employment relations by agreement to attempt to force him to quit or to fire him and to damage his professional and personal reputation by maliciously spreading false information to interfere with his prospective employment opportunities was precluded, on grounds that employee failed to exhaust administrative remedies, under District of Columbia Comprehensive Merit Personnel Act (CMPA), since employee failed to respond to District's exhaustion argument, and CMPA was intended to address all grievances or removal disputes between District and its employees. *Payne v. District of Columbia*, 592 F.Supp.2d 29, 2008 U.S. Dist. LEXIS 104901 (2008).

Former District of Columbia elevator inspector's claim that District breached express or implied contract by forcing him off payroll, terminating his employment, refusing to pay

his wages through termination, and refusing to provide him with statutory notice of right to obtain other health insurance following termination was precluded, on grounds that employee failed to exhaust administrative remedies, under District of Columbia Comprehensive Merit Personnel Act (CMPA), since relief for breach of contract claim was available under CMPA which addressed virtually every conceivable personnel issue between District and its employees. *Payne v. District of Columbia*, 592 F.Supp.2d 29, 2008 U.S. Dist. LEXIS 104901 (2008).

Exhaustion under the District of Columbia Comprehensive Merit Personnel Act (CMPA) is treated as a jurisdictional requirement by District of Columbia courts. *Payne v. District of Columbia*, 592 F.Supp.2d 29, 2008 U.S. Dist. LEXIS 104901 (2008).

Grievances.

Under District of Columbia's Comprehensive Merit Personnel Act (CMPA), aggrieved employees' common law tort claims are considered "grievances" and must be pursued through CMPA procedures. *Holman v. Williams*, 436 F.Supp.2d 68, 2006 U.S. Dist. LEXIS 44805 (2006).

Basketball coach at District of Columbia university, who alleged that she had been slandered by athletic director's oral statement that coach had been fired for misappropriation of funds, was entitled to initiate grievance proceedings under Comprehensive Merit Personnel Act (CMPA) with respect to claim. D.C. Code 1981, §§ 1-603.1(1), 1-617.2(a); D.C.Mun.Reg. title 8, § 1600.3. *Stockard v. Moss*, 706 A.2d 561, 1997 D.C. App. LEXIS 212 (1997).

Former university employee's claim that termination as part of reduction in force (RIF) was unlawful because his job had been erroneously classified into class providing less advantageous RIF procedures than had his previous classification was precluded by failure to exhaust administrative remedies at time of his promotion and reclassification over a year previously; requiring exhaustion would serve the purposes of the exhaustion doctrine by providing courts with expertise of Office of Employee Appeals (OEA) on classification issue, and timely grievance would have allowed university to redefine the duties of the position to remove uncertainty about its classification. D.C. Code 1981, §§ 1-603.1, 1-606.3(a), 1-612.1, 1-612.11; D.C.Mun.Reg. title 8, §§ 1600.3, 1600.5, 1600.6, 1600.7. *Gilmore v. Board of Trustees of the Univ. of the District of Columbia*, 695 A.2d 1164, 1997 D.C. App. LEXIS 119 (1997).

Both the Comprehensive Merit Personnel Act (CMPA) and a union contract afford a public employee rights to file grievances against a governmental employer for any matter "which

impairs or adversely affects" the employee's "interest, concern, or welfare." D.C. Code 1981, § 1-603.1(10). *District of Columbia v. Thompson*, 593 A.2d 621, 1991 D.C. App. LEXIS 172 (1991), writ of certiorari denied by 502 U.S. 942, 112 S. Ct. 380, 116 L. Ed. 2d 331, 1991 U.S. LEXIS 6258, 60 U.S.L.W. 3342 (1991).

The definition of grievance is clearly broad enough to include denial of a promotion of a faculty employee of the University of the District of Columbia. *University of D.C. v. Ausbrooks*, 117 WLR 721 (Super. Ct. 1989).

Independent agency.

Though the District of Columbia Board of Education is an independent agency, the Board is still one of the subdivisions of the District government, for purposes of prohibition against strikes by public employees contained in the Comprehensive Merit Personnel Act (CMPA). *Feaster v. Vance*, 832 A.2d 1277, 2003 D.C. App. LEXIS 566 (2003).

Personnel authority.

The authority of the Educational Institution Licensure Commission to appoint, and hence to promote, its personnel did not survive the passage of the Comprehensive Merit Personnel Act; under the Act, the mayor is the personnel authority for the Commission. D.C. Code 1981, §§ 1-601.1(3), 1-601.2(a)(2), 1-602.1, 1-603.1(14), 1-604.6(a, b), 1-633.5(b), 1-1601 et seq., 1-1605(b). *Sims v. District of Columbia*,

531 A.2d 648, 1987 D.C. App. LEXIS 443 (1987).

Personnel issues.

A supervisor's explanation of his handling of adverse employment actions, even if made outside the formal process, falls within the scope of the Comprehensive Merit Protection Act (CMPA) because the explanation relates to a personnel issue. *Washington v. District of Columbia*, 538 F.Supp.2d 269, 2008 U.S. Dist. LEXIS 20447 (2008).

Pleadings.

Former District of Columbia elevator inspector's claims that District and his supervisors defamed him, tortiously interfered with his prospective advantage, and wrongfully discharged him by maliciously making false statements that he was incompetent, in retaliation for his protected whistle-blowing activity of protesting about lax enforcement of elevator inspection regulations, were precluded, on grounds that employee failed to exhaust administrative remedies, under District of Columbia Comprehensive Merit Personnel Act (CMPA), despite employee's request for punitive damages, where employee offered no reasoned basis to find that relief available under CMPA was insufficient to "right the wrong" by alleging extraordinary circumstances required for punitive damages. *Payne v. District of Columbia*, 592 F.Supp.2d 29, 2008 U.S. Dist. LEXIS 104901 (2008).

Subchapter IV. Organization for Personnel Management.

§ 1-604.01. Policy.

It is the intent of the Council that the District's personnel management system provide for equitable application of appropriate rules or regulations among all agencies. Further, it is the intent of the Council that the rules, regulations, and standards issued by the personnel authorities under this chapter should be as flexible and responsive as possible and reflect an awareness of innovation in the fields of modern personnel management and public administration.

(Mar. 3, 1979, D.C. Law 2-139, § 401, 25 DCR 5740.)

Cross references. — Merit system, educational employees, coverage, see § 1-602.03.

Merit system, effective date provisions, see § 1-636.02.

Merit system, organization for personnel management, rules and regulations, see § 1-604.04.

Prior Codifications. — 1981 Ed., § 1-604.1.

1973 Ed., § 1-334.1.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Editor's notes. — Assessment of need for and availability of bilingual and multicultural government personnel: D.C. Law 10-238 directed that the Mayor and each independent personnel authority shall establish a Committee of Language Diversity and shall make as

assessment of the need for bilingual and multicultural personnel within their respective agencies.

CASE NOTES

Construction and application.

Statute providing that it is intent of the Council of the District of Columbia that District's personnel management system provide for equitable application of appropriate rules or regulations among all agencies was not intended to require that District university estab-

lish reduction in force (RIF) rules or any other employment practices that were identical or even similar—other than in their equitable nature—to those governing other District agencies. *Harrison v. Board of Trustees of the Univ. of the District of Columbia*, 758 A.2d 19, 2000 D.C. App. LEXIS 194 (2000).

§ 1-604.02. Office of Personnel established; appointment and eligibility of Director; delegation of Mayor's authority.

(a) There is established an Office of Personnel, the head of which is the Director of Personnel.

(b) The Director of Personnel shall be appointed by the Mayor in accordance with the provisions of subchapter X-A of this chapter.

(c) To be eligible for appointment as Director of Personnel a person shall have demonstrated, through his or her knowledge and experience, the ability to administer a public personnel program of the size and complexity of the program established by this chapter.

(d) The Mayor may delegate his or her authority under this chapter, in whole or in part, exclusively to the Director of Personnel.

(e) Subject to the availability of appropriations, the Director of Personnel shall conduct classification and compensation studies of all sworn and civilian pay classes of the Fire and Emergency Medical Services Department and the Metropolitan Police Department and, based upon those studies, recommend reforms to promote equity, competitive pay, and sound performance management. The areas for review shall include recruitment, retention, longevity, hazardous duty, technical pay, and pay incentives for recognition of superior performance based on standards promulgated by the Director of Personnel.

(Mar. 3, 1979, D.C. Law 2-139, § 402, 25 DCR 5740; Apr. 12, 2000, D.C. Law 13-91, § 103(c), 47 DCR 520; Oct. 1, 2002, D.C. Law 14-190, § 2732, 49 DCR 6968; June 5, 2003, D.C. Law 14-307, § 1502, 49 DCR 11664; Sept. 30, 2004, D.C. Law 15-194, § 802, 51 DCR 9406.)

Cross references. — Government reorganization procedures, "Executive Office of the Mayor" defined, see § 1-315.02.

Merit system, "subordinate agency" defined, see § 1-603.01.

Prior Codifications. — 1981 Ed., § 1-604.2.

1973 Ed., § 1-334.2.

Effect of amendments. — D.C. Law 13-91, in subsec. (b), substituted "subchapter XI-A" for "subchapter XI".

D.C. Law 14-190 added subsec. (e).

D.C. Law 14-307, in subsec. (e), substituted "Subject to the availability of appropriations, the Director of Personnel" for "The Director of Personnel".

D.C. Law 15-194, in subsec. (d), substituted "exclusively to the Director of Personnel" for "to the Director of Personnel".

Emergency legislation. — For temporary (90 day) amendment of section, see § 2632 of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

For temporary (90 day) amendment of section, see § 1502 of Fiscal Year 2003 Budget Support Amendment Emergency Act of 2002 (D.C. Act 14-544, December 4, 2002, 49 DCR 11700).

For temporary (90 day) amendment of section, see § 1502 of the Fiscal Year 2003 Budget Support Amendment Congressional Review Emergency Act of 2003 (D.C. Act 15-27, February 24, 2003, 50 DCR 2151).

For temporary (90 day) amendment of section, see § 1502 of Fiscal Year 2003 Budget Support Amendment Second Congressional Review Emergency Act of 2003 (D.C. Act 15-103, June 20, 2003, 50 DCR 5499).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-602.03.

Legislative history of Law 14-190. — For Law 14-190, see notes following § 1-301.131.

Legislative history of Law 14-307. — Law 14-307, the “Fiscal Year 2003 Budget Support Amendment Act of 2002”, was introduced in Council and assigned Bill No. 14-892, which was referred to the Committee on the Whole. The Bill was adopted on first and second readings on October 1, 2002, and November 7, 2002, respectively. Signed by the Mayor on December 4, 2002, it was assigned Act No. 14-543 and transmitted to both Houses of Congress for its review. D.C. Law 14-307 became effective on June 5, 2003.

Legislative history of Law 15-194. — Law 15-194, the “Omnibus Public Safety Agency Reform Amendment Act of 2004”, was introduced in Council and assigned Bill No. 15-32, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 6, 2004, and June 1, 2004, respectively. Signed by the Mayor on June 24, 2004, it was assigned Act No. 15-463 and transmitted to both Houses of Congress for its review. D.C. Law 15-194 became effective on September 30, 2004.

Short title. — Short title of subtitle C of title XXVII of Law 14-190: Section 2731 of D.C. Law 14-190 provided that subtitle C of title XXVII of the act may be cited as the Classification and Compensation Studies for Police and Fire Amendment Act of 2002.

Mayor’s Orders. — Re-Designation of the D.C. Office of Personnel as the D.C. Department of Human Resources, see Mayor’s Order 2007-61, February 28, 2007 (54 DCR 2437).

Amendment of Mayor’s Order 90-178, Delegation of Contracting Authority; Delegation of Personnel Authority; and Establishment of Position of Administrator in the Commission on Mental Health Services: See Mayor’s Order 96-172, December 9, 1996 (43 DCR 6973).

Amendment of Mayor’s Order 96-172, Establishing Position of Administrator in the Commission on Mental Health Services; Appointment of Interim Administrator; Duties of Administrator: See Mayor’s Order 97-6, January 9, 1997 (44 DCR 357).

CASE NOTES

Due Process.

Although District of Columbia Comprehensive Merit Personnel Act (CMPA) provided exclusive avenue for aggrieved District employees to pursue work-related complaints, CMPA did not foreclose court from entertaining District employee’s claim that District and District offi-

cials violated her due process rights by allegedly terminating her worker’s compensation benefits. *Deschamps v. District of Columbia*, 582 F.Supp.2d 14, 2008 U.S. Dist. LEXIS 85539 (2008), dismissed by 2009 U.S. Dist. LEXIS 3788 (D.D.C. Jan. 21, 2009).

§ 1-604.03. Authority of the District of Columbia Board of Education and the Board of Trustees of the University of the District of Columbia.

The District of Columbia Board of Education and the Board of Trustees of the University of the District of Columbia may delegate their duties and functions under this chapter, in whole or in part, to employees under their respective jurisdictions.

(Mar. 3, 1979, D.C. Law 2-139, § 403, 25 DCR 5740; Feb. 24, 1987, D.C. Law 6-177, § 3(e), 33 DCR 7241; Aug. 1, 1996, D.C. Law 11-152, § 302(d), 43 DCR 2978.)

Section references. — This section is referred to in § 1-604.04.

Prior Codifications. — 1981 Ed., § 1-604.3.

1973 Ed., § 1-334.3.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 6-177. — For legislative history of D.C. Law 6-177, see Historical and Statutory Notes following § 1-601.02.

Legislative history of Law 11-152. — For legislative history of D.C. Law 11-152, see Historical and Statutory Notes following § 1-602.02.

Editor's notes. — Repeal of § 3 of Law 6-177: Section 4(b) of D.C. Law 6-177 provided that the provisions of § 3 are repealed on the 1st day following the 36-month period after February 24, 1987.

Repeal of § 4(b) of Law 6-177: Section 3(b) of D.C. Law 8-74, effective March 15, 1990, provided that § 4(b) of D.C. Law 6-177 is repealed.

CASE NOTES

Due Process.

Although District of Columbia Comprehensive Merit Personnel Act (CMPA) provided exclusive avenue for aggrieved District employees to pursue work-related complaints, CMPA did not foreclose court from entertaining District employee's claim that District and District offi-

cials violated her due process rights by allegedly terminating her worker's compensation benefits. *Deschamps v. District of Columbia*, 582 F.Supp.2d 14, 2008 U.S. Dist. LEXIS 85539 (2008), dismissed by 2009 U.S. Dist. LEXIS 3788 (D.D.C. Jan. 21, 2009).

§ 1-604.04. Issuance of rules and regulations affecting personnel for employees of the District of Columbia.

(a) The Mayor shall issue rules and regulations to implement the provisions of subchapters II, IV, VII, VIII, VIII-B, IX, IX-A, X-A, XI, XII, XIII, XIII-A, XV, XVI-A, XVII, XVIII, XIX, XX, XX-A, XXI, XXII, XXIII, XXIV, XXV, XXVI, XXVII, XXVIII, XXIX, XXX, XXXI, XXXII, and XXXIV of this chapter, for all employees of the District of Columbia, except as may be otherwise provided in this subchapter.

(b) The District of Columbia Board of Education and the Board of Trustees of the University of the District of Columbia shall each issue rules and regulations to implement the provisions of subchapter VIII-A of this chapter.

(c)(1) The District of Columbia Board of Education shall issue rules and regulations to implement the provisions of subchapters VII, XIII, XIX, XXIV, and XXVII of this chapter, and §§ 1-602.03, 1-604.03 and 1-611.11 for educational employees under its respective jurisdictions.

(2) The Board of the University of the District of Columbia shall issue rules and regulations to implement the provisions of subchapters VII and XXVII of this chapter, and §§ 1-602.03, 1-604.03, and 1-611.11 for educational employees under its jurisdiction.

(3) Repealed.

(d) The District of Columbia Board of Education and the Board of Trustees of the University of the District of Columbia shall each issue rules and regulations to implement the provisions of subchapters XII, XIII-A, XVI-A, XVII, XXV, and XXXI of this chapter, and § 1-602.02(2) for all employees under their respective jurisdictions.

(e) The Public Employee Relations Board shall issue rules and regulations to carry out its authority under subchapters V and XVII of this chapter.

(f) The Office of Employee Appeals shall issue rules and regulations to carry out its authority under subchapter VI of this chapter.

(g) The District of Columbia Board of Elections and Ethics shall issue rules and regulations to carry out its authority under subchapter XXV of this chapter.

(h) Except where proscribed by law or issued under the authority of subsection (e), (f), or (g) of this section, rules and regulations issued pursuant to this chapter shall not be a bar to collective bargaining during the negotiation process with an exclusively recognized labor organization.

(Mar. 3, 1979, D.C. Law 2-139, § 404, 25 DCR 5740; Feb. 24, 1987, D.C. Law 6-177, § 3(f), 33 DCR 7241; Aug. 1, 1996, D.C. Law 11-152, § 302(e), 43 DCR 2978; Apr. 20, 1999, D.C. Law 12-260, § 2(b), 46 DCR 1318; Apr. 12, 2000, D.C. Law 13-91, § 103(d), 47 DCR 520; Oct. 19, 2002, D.C. Law 14-213, § 3(b), 49 DCR 8140.)

Section references. — This section is referred to in §§ 1-604.05, 1-606.03, and 1-636.02.

Prior Codifications. — 1981 Ed., § 1-604.4.

1973 Ed., § 1-334.4.

Effect of amendments. — D.C. Law 13-91 rewrote subsecs. (a) and (d), which previously read:

“(a) The Mayor shall issue rules and regulations to implement the provisions of subchapters II, IV, VII, VIII, IX-B, X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX, XX, XXI, XXII, XXIII, XXIV, XXV, XXVI, XXVII, XXVIII, XXIX, XXX, XXXI, XXXII, XXXIII, and XXXV of this chapter, for all employees of the District of Columbia, except as may be otherwise provided in this subchapter.”

“(d) The District of Columbia Board of Education and the Board of Trustees of the University of the District of Columbia shall each issue rules and regulations to implement the provisions of subchapters XIII, XV, XVII, XVIII, XXVI, and XXXII of this chapter, and § 1-602.2(2) for all employees under their respective jurisdictions.”

D.C. Law 14-213, in subsec. (a), validated a previously made technical correction.

Emergency legislation. — For temporary amendment of section, see § 2(b) of the Legal Service Establishment Emergency Amendment Act of 1998 (D.C. Act 12-620, January 22, 1999, 46 DCR 1343).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 6-177. — For legislative history of D.C. Law 6-177, see Historical and Statutory Notes following § 1-601.02.

Legislative history of Law 11-152. — For legislative history of D.C. Law 11-152, see Historical and Statutory Notes following § 1-602.02.

Legislative history of Law 12-260. — Law 12-260, the “Legal Service Establishment Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-660, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-612 and transmitted to both Houses of Congress for its review. D.C. Law 12-260 became effective on April 20, 1999.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-602.03.

Legislative history of Law 14-213. — For Law 14-213, see notes following § 1-603.01.

Mayor’s Orders. — Delegation of Personnel Authority in the Metropolitan Police Department to the Chief of Police: See Mayor’s Order 97-88, May 9, 1997 (44 DCR 2959).

Editor’s notes. — Repeal of § 3 of Law 6-177: Section 4(b) of D.C. Law 6-177 provided that the provisions of § 3 are repealed on the 1st day following the 36-month period after February 24, 1987.

Repeal of § 4(b) of Law 6-177: Section 3(b) of D.C. Law 8-74, effective March 15, 1990, provided that § 4(b) of D.C. Law 6-177 is repealed.

CASE NOTES

Due Process.

Although District of Columbia Comprehensive

Merit Personnel Act (CMPA) provided exclusive avenue for aggrieved District employees

to pursue work-related complaints, CMPA did not foreclose court from entertaining District employee's claim that District and District officials violated her due process rights by allegedly terminating her worker's compensation

benefits. *Deschamps v. District of Columbia*, 582 F.Supp.2d 14, 2008 U.S. Dist. LEXIS 85539 (2008), dismissed by 2009 U.S. Dist. LEXIS 3788 (D.D.C. Jan. 21, 2009).

§ 1-604.05. Issuance of rules and regulations.

Rules and regulations proposed or issued pursuant to § 1-604.04, and amendments, shall be issued according to the provisions of § 2-505.

(Mar. 3, 1979, D.C. Law 2-139, § 405, 25 DCR 5740; Oct. 1, 1987, D.C. Law 7-27, § 2(b), 34 DCR 5079; June 10, 1998, D.C. Law 12-124, § 101(b), 45 DCR 2464.)

Section references. — This section is referred to in § 1-611.08.

Prior Codifications. — 1981 Ed., § 1-604.5.

1973 Ed., § 1-334.5.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 7-27. — For legislative history of D.C. Law 7-27, see Historical and Statutory Notes following § 1-621.02.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

CASE NOTES

Due Process.

Although District of Columbia Comprehensive Merit Personnel Act (CMPA) provided exclusive avenue for aggrieved District employees to pursue work-related complaints, CMPA did not foreclose court from entertaining District employee's claim that District and District officials

violated her due process rights by allegedly terminating her worker's compensation benefits. *Deschamps v. District of Columbia*, 582 F.Supp.2d 14, 2008 U.S. Dist. LEXIS 85539 (2008), dismissed by 2009 U.S. Dist. LEXIS 3788 (D.D.C. Jan. 21, 2009).

§ 1-604.06. Personnel authority.

(a) The implementation of the rules and regulations shall be undertaken by the appropriate personnel authority for employees of the District.

(b) For the purposes of subsection (a) of this section, the personnel authority for District of Columbia government means the Mayor for all employees, except as provided in § 1-602.03 and as follows:

(1) For noneducational employees of the District of Columbia Board of Education, the personnel authority is the District of Columbia Board of Education;

(2) For noneducational employees of the Board of Trustees of the University of the District of Columbia, the personnel authority is the Board of Trustees of the University of the District of Columbia;

(3) For employees of the Council of the District of Columbia, the personnel authority is:

(A)(i) The Chairman of the Council for all central staff of the Council and the employees in the Legal Services employed by the Council of the District of Columbia. For the purposes of this subchapter, the term "central staff of the Council" refers to those employees described in § 1-609.03(a)(3)

except those assigned to an individual member of the Council; provided, however, that the Secretary, General Counsel, and Budget Director to the Council to the Council shall be appointed by the Council of the District of Columbia according to its rules of procedure and organization; and

(ii) For employees of the Council, the Chairman of the Council shall exercise the authority possessed by the Director of the Department of Human Resources and may adopt personnel procedures applicable to those employees; and

(B) each member of the Council for his or her personal and committee staff; provided, however, that the respective committees of the Council shall approve the appointment of each committee staffperson. The Chairman and each member of the Council shall utilize the Secretary to the Council for the actual transaction of all personnel matters for employees of the Council;

(3A) For the Executive Director of the Office of Advisory Neighborhood Commissions, the personnel authority is the Chairman of the Council.

(4) For employees of the Board of Elections, the personnel authority is the Board of Elections; provided, however, that this authority shall not apply to the Director of Campaign Finance (§ 1-1163.02). For employees in the Office of Director of Campaign Finance, the personnel authority is the Director of Campaign Finance;

(5) For employees of the Public Service Commission, the personnel authority is the Public Service Commission; provided, however, that the People's Counsel (D.C. Official Code, § 34-804) shall be appointed according to law and for employees under the direct administrative control of the People's Counsel, the personnel authority is the People's Counsel;

(6) For the Executive Director of the Public Employee Relations Board, created by subchapter V of this chapter, the personnel authority is the Public Employee Relations Board; and for all other employees of the Board, the personnel authority is the Executive Director of the Board;

(7) For the Executive Director of the Office of Employee Appeals and the General Counsel of the Office of Employee Appeals created by subchapter VI of this chapter, the personnel authority is the Office of Employee Appeals; and for all other employees of the Office, the personnel authority is the Executive Director;

(8) For employees of the Office of District of Columbia Auditor (D.C. Official Code, § 1-204.55), the personnel authority is the Auditor of the District of Columbia;

(9) Repealed;

(10) For employees of the District of Columbia Armory Board (D.C. Official Code, § 3-302), the personnel authority is the Armory Board;

(11) For employees of the District of Columbia Law Revision Commission, the personnel authority is the District of Columbia Law Revision Commission;

(12) For employees of the District of Columbia Board of Library Trustees, the personnel authority is the Board of Library Trustees;

(13) Repealed;

(14) For the Executive Director and Deputy Director of the District of Columbia Lottery and Charitable Games Control Board ("Board"), the person-

nel authority is the Board, and for all other employees of the Board the personnel authority is the Executive Director of the Board;

(15) For employees of the District of Columbia Retirement Board, the personnel authority is the District of Columbia Retirement Board;

(16) For the Director of the Office of Zoning, the personnel authority shall be the District members of the Zoning Commission for the District of Columbia, and for any other employee of the Office of Zoning the personnel authority shall be the Director of the Office of Zoning;

(17) For employees of the Child and Family Services Agency, the personnel authority is the Director of the Child and Family Services Agency;

(18) For employees of the Criminal Justice Coordinating Council, the personnel authority is the Criminal Justice Coordinating Council;

(19) For employees of the District of Columbia Sentencing and Criminal Code Revision Commission, the personnel authority is the District of Columbia Sentencing and Criminal Code Revision Commission;

(20) For employees of the Department of Mental Health, the personnel authority is the Director of the Department of Mental Health; and

(21) For the Director of the Alcoholic Beverage Regulation Administration, the personnel authority shall be the members of the Alcoholic Beverage Control Board for the District of Columbia, and for any other employee of the Alcoholic Beverage Regulation Administration, the personnel authority shall be the Director of the Alcoholic Beverage Regulation Administration.

(Mar. 3, 1979, D.C. Law 2-139, § 406, 25 DCR 5740; Feb. 26, 1981, D.C. Law 3-119, § 5, 27 DCR 5641; Aug. 2, 1983, D.C. Law 5-24, § 12(a), 30 DCR 3341; Feb. 24, 1987, D.C. Law 6-177, § 3(g), 33 DCR 7241; Feb. 28, 1987, D.C. Law 6-205, § 2(a), 34 DCR 670; Mar. 16, 1989, D.C. Law 7-228, § 2(b), 36 DCR 754; Mar. 24, 1990, D.C. Law 8-97, § 3(b), 37 DCR 1046; May 15, 1990, D.C. Law 8-127, § 2(a), 37 DCR 2093; Sept. 20, 1990, D.C. Law 8-163, § 6, 37 DCR 4676; Aug. 1, 1996, D.C. Law 11-152, § 302(f), 43 DCR 2978; June 10, 1998, D.C. Law 12-124, § 101(c), 45 DCR 2464; Apr. 12, 2000, D.C. Law 13-91, § 103(e), 47 DCR 520; Apr. 4, 2001, D.C. Law 13-277, § 3(b)(2), 48 DCR 2043; Oct. 3, 2001, D.C. Law 14-28, §§ 1507(a)(1), 3803(a), 48 DCR 6981; Dec. 18, 2001, D.C. Law 14-56, § 116(a)(2), 48 DCR 7674; Mar. 6, 2002, D.C. Law 14-80, § 3, 48 DCR 11268; Mar. 13, 2004, D.C. Law 15-105, §§ 21, 22(a), 23, 51 DCR 881; Sept. 30, 2004, D.C. Law 15-187, § 102(a), 51 DCR 6525; Sept. 30, 2004, D.C. Law 15-190, § 3(a), 51 DCR 6737; Apr. 7, 2006, D.C. Law 16-91, §§ 110(a), 119, 120(a), 52 DCR 10637; June 16, 2006, D.C. Law 16-126, § 3(a), 53 DCR 4709; Mar. 3, 2010, D.C. Law 18-111, § 1103, 57 DCR 181; Apr. 27, 2012, D.C. Law 19-124, § 501(c)(2), 59 DCR 1862.)

Cross references. — Taxicab commission, membership, see § 50-305.

Section references. — This section is referred to in §§ 1-606.11 and 1-609.05.

Prior Codifications. — 1981 Ed., § 1-604.6.

1973 Ed., § 1-334.6.

Effect of amendments. — D.C. Law 13-91

validated a previously made technical amendment in par. (13) of subsec. (b).

D.C. Law 13-277 added par. (17).

D.C. Law 14-28, in subsec. (b), added pars. (18) and (19).

D.C. Law 14-56, in subsec. (b), added par. (20).

D.C. Law 14-80, in subsec. (b), added par. (3A).

D.C. Law 15-105, in subsec. (a), validated previously made technical corrections.

D.C. Law 15-187 added a new par. (17) (21) of subsec. (b).

D.C. Law 15-190, in par. (19) of subsec. (b), substituted "District of Columbia Sentencing Commission" for "Advisory Commission on Sentencing" in two places.

D.C. Law 16-91, in subsec. (b)(3)(A), inserted "Council and the employees in the Legal Services employed by the Council of the District of Columbia; and, in subsecs. (b)(19), (20), and (21), validated previously made technical corrections.

D.C. Law 16-126, in subsec. (b)(19), substituted "Sentencing and Criminal Code Revision Commission" for "Sentencing Commission" in two places.

D.C. Law 18-111, in subsec. (b)(3)(A), designated the existing text as sub-sub par. (i) and added sub-sub par. (ii).

D.C. Law 19-124, in subsec. (b)(4), substituted "Board of Elections" for "District of Columbia Board of Elections and Ethics" both times it appears, and substituted "§ 1-1163.02" for "D.C. Official Code, § 1-1103.01".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3 of Advisory Neighborhood Commission Temporary Amendment Act of 2001 (D.C. Law 14-21, September 6, 2001, law notification 48 DCR 9091).

For temporary (225 day) amendment of section, see § 16(a)(2) of Department of Mental Health Establishment Temporary Amendment Act of 2001 (D.C. Law 14-51, October 30, 2001, law notification 48 DCR 10807).

Emergency legislation. — For temporary (90 day) amendment of section, see § 16(a)(2) of Department of Mental Health Establishment Emergency Amendment Act of 2001 (D.C. Act 14-55, May 2, 2001, 48 DCR 4390).

For temporary (90 day) amendment of section, see § 3 of Advisory Neighborhood Commission Emergency Amendment Act of 2001 (D.C. Act 14-56, May 2, 2001, 48 DCR 4410).

For temporary (90 day) amendment of section, see § 16(a)(2) of Department of Mental Health Establishment Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-101, July 23, 2001, 48 DCR 7123).

For temporary (90 day) amendment of section, see § 3 of Advisory Neighborhood Commission Congressional Review Emergency

Amendment Act of 2001 (D.C. Act 14-104, July 23, 2001, 48 DCR 7149).

For temporary (90 day) amendment of section, see §§ 1407(a)(1) and 3403(a) of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

For temporary (90 day) amendment of section, see § 116(a)(2) of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

For temporary transfer, due to Congressional review, of the operation of the Disability Compensation Program from the Office of Personnel to the Office of the City Administrator, see § 2 of Disability Compensation Program Transfer and Risk Management Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-128, July 29, 2003, 50 DCR 6836).

For temporary transfer, due to Congressional review, of the operation of the Disability Compensation Program from the Office of Personnel to the Office of the City Administrator, see § 2 of Disability Compensation Program Transfer and Risk Management Second Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-172, October 6, 2003, 50 DCR 9173).

For temporary (90 day) amendment of section, see § 3(a) of Advisory Commission on Sentencing Structured Sentencing System Pilot Program Emergency Amendment Act of 2004 (D.C. Act 15-437, May 21, 2004, 51 DCR 5957).

For temporary (90 day) amendment of section, see § 3(a) of Advisory Commission on Sentencing Structured Sentencing System Pilot Program Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-510, August 2, 2004, 51 DCR 8967).

For temporary (90 day) amendment of section, see § 1103 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 1103 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

For temporary (90 day) amendment of section, see § 401(c)(2) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-603.01.

Legislative history of Law 3-119. — Law 3-119 was introduced in Council and assigned Bill No. 3-324, which was referred to the Com-

mittee on the Judiciary. The Bill was adopted on first and second readings on November 25, 1980 and December 9, 1980, respectively. Signed by the Mayor on December 18, 1980, it was assigned Act No. 3-313 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-24. — Law 5-24 was introduced in Council and assigned Bill No. 5-169, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 10, 1983, and May 24, 1983, respectively. Signed by the Mayor on June 9, 1983, it was assigned Act No. 5-41 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-177. — For legislative history of D.C. Law 6-177, see Historical and Statutory Notes following § 1-601.02.

Legislative history of Law 6-205. — Law 6-205 was introduced in Council and assigned Bill No. 6-526, which was referred to the Committee on Libraries, Recreation, and Charitable Games. The Bill was adopted on first and second readings on November 18, 1986 and December 16, 1986, respectively. Signed by the Mayor on January 8, 1987, it was assigned Act No. 6-265 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-228. — For legislative history of D.C. Law 7-228, see Historical and Statutory Notes following § 1-602.01.

Legislative history of Law 8-97. — Law 8-97 was introduced in Council and assigned Bill No. 8-267, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 19, 1989, and January 16, 1990, respectively. Signed by the Mayor on January 26, 1990, it was assigned Act No. 8-149 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-127. — For legislative history of D.C. Law 8-127, see Historical and Statutory Notes following § 1-606.06.

Legislative history of Law 8-163. — Law 8-163 was introduced in Council and assigned Bill No. 8-118, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on May 29, 1990, and June 12, 1990, respectively. Approved without the signature of the Mayor on June 29, 1990, it was assigned Act No. 8-227 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-152. — For legislative history of D.C. Law 11-152, see Historical and Statutory Notes following § 1-602.02.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see His-

torical and Statutory Notes following § 1-603.01.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-602.03.

Legislative history of Law 13-277. — For Law 13-277, see notes following § 1-603.01.

Legislative history of Law 14-28. — Law 14-28, the "Fiscal Year 2002 Budget Support Act of 2001", was introduced in Council and assigned Bill No. 14-144, which was referred to the Committee Of the Whole. The Bill was adopted on first and second readings on May 1, 2001, and June 5, 2001, respectively. Signed by the Mayor on June 29, 2001, it was assigned Act No. 14-85 and transmitted to both Houses of Congress for its review. D.C. Law 14-28 became effective on October 3, 2001.

Legislative history of Law 14-56. — For Law 14-56, see notes following § 1-603.01.

Legislative history of Law 14-80. — For Law 14-80, see notes following § 1-309.13.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 1-301.47.

Legislative history of Law 15-187. — For Law 15-187, see notes following § 1-309.10.

Legislative history of Law 15-190. — Law 15-190, the "Advisory Commission on Sentencing Structured Sentencing System Pilot Program Amendment Act of 2004", was introduced in Council and assigned Bill No. 15-711, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 4, 2004, and June 1, 2004, respectively. Signed by the Mayor on June 23, 2004, it was assigned Act No. 15-457 and transmitted to both Houses of Congress for its review. D.C. Law 15-190 became effective on September 30, 2004.

Legislative history of Law 16-126. — Law 16-126, the "Advisory Commission on Sentencing Amendment Act of 2006", was introduced in Council and assigned Bill No. 16-172 which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on March 7, 2006, and April 4, 2006, respectively. Signed by the Mayor on April 21, 2006, it was assigned Act No. 16-344 and transmitted to both Houses of Congress for its review. D.C. Law 16-126 became effective on June 16, 2006.

Legislative history of Law 16-91. — For Law 16-91, see notes following § 1-301.45.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 1-301.181.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

Delegation of Authority. — Delegations and sub-delegations of authority—Director of Personnel, Chief of Police, and Agency Heads—Rescission of Mayor's Orders 80-78, 92-114, 99-79 and Deletion of Part I of Mayor's Order 97-88, see Mayor's Order 2000-83, May 30, 2000 (47 DCR 4956).

Joint Delegation of Personnel Authority in the Department of Human Services, see Mayor's Order 2002-104, June 28, 2002 (49 DCR 6001).

Delegation of Authority to Conduct Background Investigations for Potential and Current Information Technology Employees in Subordinate Agencies, see Mayor's Order 2003-136, September 25, 2003 (50 DCR 9955).

Delegation of Personnel Authority in the Office of the Attorney General for the District of Columbia, see Mayor's Order 2007-237, November 2, 2007 (55 DCR 173).

Delegation of Personnel Authority to Identify and Designate Positions Subject to, and to Conduct, Criminal Background Investigations for Employees in Subordinate Agencies, see Mayor's Order 2011-183, November 2, 2011 (58 DCR 9652).

Mayor's Orders. — Delegation of Personnel Authority in the Metropolitan Police Department to the Chief of Police: See Mayor's Order 97-88, May 9, 1997 (44 DCR 2959).

Editor's notes. — Repeal of § 3 of Law 6-177: Section 4(b) of D.C. Law 6-177 provided that the provisions of § 3 are repealed on the 1st day following the 36-month period after February 24, 1987.

Repeal of § 4(b) of Law 6-177: Section 3(b) of D.C. Law 8-74, effective March 15, 1990, provided that § 4(b) of D.C. Law 6-177 is repealed.

Drug Free Workplace Policy: See Mayor's Order 90-27, January 31, 1990.

Powers of Chief Financial Officer: Section 152 of Pub. L. 104-134, 110 Stat. 1321 220 provided that:

"Notwithstanding any other provision of law, for the fiscal years ending September 30, 1996 and September 30, 1997 —

"(a) the heads and all other personnel of the following offices, together with all other District

of Columbia executive branch accounting, budget, and financial management personnel, shall be appointed by, shall serve at the pleasure of, and shall act under the direction and control of the Chief Financial Officer:

"The Office of the Treasurer.

"The Controller of the District of Columbia.

"The Office of the Budget.

"The Office of Financial Information Services.

"The Department of Finance and Revenue.

"The District of Columbia Financial Responsibility and Management Assistance Authority established pursuant to Public Law 104-8, approved April 17, 1995, may remove such individuals from office for cause, after consultation with the Mayor and the Chief Financial Officer.

"(b) the Chief Financial Officer shall prepare and submit to the Mayor, for inclusion in the annual budget of the District of Columbia under part D of title IV of the District of Columbia Self-Government and Governmental Reorganization Act of 1993, approved December 24, 1973 (87 Stat. 774; Public Law 93-198), as amended, for fiscal years 1996, 1997 and 1998, annual estimates of the expenditures and appropriations necessary for the operation of the Office of the Chief Financial Officer for the year. All such estimates shall be forwarded by the Mayor to the Council of the District of Columbia for its action pursuant to sections 446 and 603(c) of such Act, without revision but subject to recommendations. Notwithstanding any other provisions of such Act, the Council may comment or make recommendations concerning such estimates, but shall have no authority to revise such estimates."

Applicability: Section 4 of D.C. Law 16-126 provided: "This act shall apply as of January 1, 2007."

CASE NOTES

ANALYSIS

Mayoral authority.

Public defender service.

Mayoral authority.

The authority of the Educational Institution Licensure Commission to appoint, and hence to promote, its personnel did not survive the passage of the Comprehensive Merit Personnel Act; under the Act, the mayor is the personnel authority for the Commission. D.C. Code 1981,

§§ 1-601.1(3), 1-601.2(a)(2), 1-602.1, 1-603.1(14), 1-604.6(a, b), 1-633.5(b), 31-1601 et seq., 31-1605(b). *Sims v. District of Columbia*, 531 A.2d 648, 1987 D.C. App. LEXIS 443 (1987).

Public defender service.

Nonattorney employee of Public Defender Service was covered by Comprehensive Merit Personnel Act. D.C. Code 1981, § 1-601.1 et seq. *Public Defender Serv. v. Saint-Preux*, 691 A.2d 1160, 1997 D.C. App. LEXIS 58 (1997).

§ 1-604.07. Transfer of personnel functions to Office of Personnel; exception; property and funds transferred; separation and reassignment of transferred employee.

All positions and employees of the District who spent 50 percent or more of their regular duty hours on January 1, 1976, or at any time since that date performing personnel functions, are transferred to the Office of Personnel unless properly reclassified by the District of Columbia Office of Personnel, except as provided herein. The provisions of this section shall not apply to employees in positions within the independent agencies. All property and funds associated with those positions and employees transferred to the Office of Personnel are transferred thereto as provided in subchapter XXXVI of this chapter unless prohibited by statute. Any employee found to be superfluous to the needs of the Office of Personnel shall be separated from his or her position in accordance with appropriate reduction-in-force procedures as provided in subchapter XXIV of this chapter. The Mayor may authorize the reassignment of such employees as is appropriate.

(Mar. 3, 1979, D.C. Law 2-139, § 407, 25 DCR 5740.)

Section references. — This section is referred to in § 1-636.02.

Prior Codifications. — 1981 Ed., § 1-604.7.

1973 Ed., § 1-334.7.

Temporary Addition of Section. — For temporary (225 day) amendment of section, see § 2 of Disability Compensation Program Transfer Temporary Amendment Act of 2002 (D.C. Law 14-202, October 17, 2002, law notification 49 DCR 12020).

Emergency legislation. — For temporary (90 day) amendment of section, see § 1102 of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

For temporary (90 day) transfer of powers, duties, and functions to the Office of Risk Management, see § 2 of Disability Compensation Program Transfer Emergency Amendment Act of 2002 (D.C. Act 14-400, June 26, 2002, 49 DCR 6526).

For temporary (90 day) transfer of property, records, and unexpended funds to the Office of Risk Management, see § 2 of Disability Compensation Program Transfer Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-476, October 3, 2002, 49 DCR 9568).

For temporary transfer, due to Congressional review, of the operation of the Disability Compensation Program from the Office of Personnel to the Office of the City Administrator, see § 2 of Disability Compensation Program Transfer and Risk Management Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-128, July 29, 2003, 50 DCR 6836).

For temporary transfer, due to Congressional review, of the operation of the Disability Compensation Program from the Office of Personnel to the Office of the City Administrator, see § 2 of Disability Compensation Program Transfer and Risk Management Second Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-172, October 6, 2003, 50 DCR 9173).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 15-39. — For Law 15-39, see notes following § 1-204.42.

Short title. — Short title of title XX of Law 15-39: Section 2001 of D.C. Law 15-39 provided that title XX of the act may be cited as the Disability Compensation Program Transfer and Risk Management Amendment Act of 2003.

Editor's notes. — Government Employees Disability Compensation Reorganization: Section 1202 of D.C. Law 14-28 provided:

“(a) All of the powers, duties and functions authorized by Title XXIII of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code 1-623.01 et seq.), as set forth in Part C, section III of Reorganization Plan No. 3 of 1980, effective January 10, 1981, except for the disability compensation formal hearing and administrative appeal functions which shall remain in the Labor Standards Bureau of the Department of Employment Services, are hereby transferred

to the Office of Personnel, established pursuant to Mayor's Order 79-84, effective May 10, 1979.

"(b) All property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available to the Department of Employment Services for the administration and operation of the disability compensation program for District government employees authorized by Title XXIII of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code 1-623.01 et seq.), and set forth in Part C, section III of Reorganization Plan No. 3 of 1980, effective January 10, 1981, except for the disability compensation formal hearing and administrative appeal functions, which shall remain in the Labor Standards Bureau of the Department of Employment Services, are hereby transferred to the Office of Personnel, established pursuant to Mayor's Order 79-84, effective May 10, 1979.

"(c) The Office of Personnel shall pay the Department of Employment Services for the

cost of disability compensation hearing and administrative appeal functions, pursuant to an assessment by the Department of Employment Services."

Section 2002 of D.C. Law 15-39 provided:

"(a) All of the powers, duties, and functions transferred to the Office of Personnel under section 1202 of the District of Columbia Government Employees Disability Compensation Reorganization and Amendment Act of 2001, effective October 3, 2001 (D.C. Law 14-28; 48 DCR 6891), are hereby transferred to the Office of the City Administrator.

"(b) All property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available to the Office of Personnel under section 1202 of the District of Columbia Government Employees Disability Compensation Reorganization and Amendment Act of 2001, effective October 3, 2001 (D.C. Law 14-28; 48 DCR 6891), are hereby transferred to the Office of the City Administrator."

CASE NOTES

Due Process.

Although District of Columbia Comprehensive Merit Personnel Act (CMPA) provided exclusive avenue for aggrieved District employees to pursue work-related complaints, CMPA did not foreclose court from entertaining District employee's claim that District and District offi-

cials violated her due process rights by allegedly terminating her worker's compensation benefits. *Deschamps v. District of Columbia*, 582 F.Supp.2d 14, 2008 U.S. Dist. LEXIS 85539 (2008), dismissed by 2009 U.S. Dist. LEXIS 3788 (D.D.C. Jan. 21, 2009).

§ 1-604.08. Oath of office.

Each personnel authority of an agency of the District shall designate a person to administer the oath of office to each employee of that agency. The oath shall be as follows:

"I, (employee's name) do solemnly swear (or affirm) that I will faithfully execute the laws of the United States of America and of the District of Columbia, and will, to the best of my ability, preserve, protect and defend the Constitution of the United States, and will faithfully discharge the duties of the office on which I am about to enter."

(Mar. 3, 1979, D.C. Law 2-139, § 408, 25 DCR 5740; Apr. 30, 1988, D.C. Law 7-104, § 36(a), 35 DCR 147.)

Cross references. — Statehood Constitutional Convention initiative, oaths of representatives and senators, see § 1-123.

Economic Development Finance Corporation, personnel administration, see § 2-1207.06.

Election campaigns, conflict of interest, dis-

closure, see § 1-1106.02.

Merit system, coverage, agreements to provide coverage, see § 1-602.01.

Merit system, educational employees, coverage, see § 1-602.03.

Merit system, educational service, rules and

regulations, see § 1-608.01a.

Merit system, effective date provisions, see § 1-636.02.

Organization for personnel management, rules and regulations, see § 1-604.04.

Public employee relations board, transfer of property, personnel and cases, see § 1-605.03.

Washington Convention Center Authority, application of this subchapter, see § 10-1202.16.

Section references. — This section is referred to in § 1-602.02.

Prior Codifications. — 1981 Ed., § 1-604.8.

1973 Ed., § 1-334.8.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 7-104. — Law 7-104 was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 24, 1987 and December 8, 1987, respectively. Signed by the Mayor on December 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

CASE NOTES

Due Process.

Although District of Columbia Comprehensive Merit Personnel Act (CMPA) provided exclusive avenue for aggrieved District employees to pursue work-related complaints, CMPA did not foreclose court from entertaining District employee's claim that District and District offi-

cials violated her due process rights by allegedly terminating her worker's compensation benefits. *Deschamps v. District of Columbia*, 582 F.Supp.2d 14, 2008 U.S. Dist. LEXIS 85539 (2008), dismissed by 2009 U.S. Dist. LEXIS 3788 (D.D.C. Jan. 21, 2009).

Subchapter V. Public Employee Relations Board.

§ 1-605.01. Establishment of Board; qualifications; composition; term of office; removal; vacancies; conflict of interest; compensation; attendance at meetings; appointment of employees; request for appropriations; quorum.

(a) There is established a Public Employee Relations Board (hereinafter referred to in this subchapter as the "Board") consisting of 5 members, not otherwise in the employment of any labor organization granted exclusive recognition under this chapter or the District of Columbia government: Except, that members of the Board of Labor Relations established by Commissioner's Order 70-229 may be appointed to the Public Employee Relations Board. The members shall be appointed by the Mayor within 60 days after the effective date of this subsection.

(b) The Mayor shall select members of the Board from persons who through their experience have demonstrated an expert knowledge of the field of labor relations and who possess the integrity and impartiality necessary to protect the public interest and the interests of the District of Columbia government and its employees. Every effort shall be made to select members who have experience in public sector labor relations and preference shall be given to such persons in the Mayor's appointments to the Board.

(c) The members of the Board shall be selected by the Mayor in the following manner:

(1) One member shall be chosen from those persons whose names appear upon lists proposed by labor organizations each of which has been granted

exclusive recognition for at least 250 District government employees at the time that the Mayor is making his or her selection;

(2) One member shall be chosen from a list of at least 2 names proposed by an ad hoc committee appointed by the Mayor representing agency heads within the District government; and

(3) Three neutral members, of whom 1 shall be designated by the Mayor as Chairperson, shall be public members.

(d) The term of office for each member is 3 years: Except, that members first appointed to the Public Employee Relations Board shall serve the following terms:

(1) Two members shall serve for 1 year;

(2) two additional members shall serve for 2 years; and

(3) the Chairperson shall serve a 3-year term.

The Mayor shall designate the term of each member at the time of his or her appointment.

(e) The Mayor may remove any member of the Board who engages in any activity prohibited by subsection (g) of this section or for repeated failures to attend Board meetings, and appoint a new member in accordance with the provisions of subsection (c) of this section to serve until the expiration of the term of the member so removed. When the Mayor believes that any member has engaged in any such activity, he or she shall initiate an action in the Superior Court of the District of Columbia in accordance with the provisions of § 16-3521 et seq. to remove such member.

(f) Any vacancy occurring in the Board shall be filled within 45 days after the occurrence of such vacancy excluding Saturdays, Sundays and legal holidays.

(g) A member of the Board who: (1) Violates the provisions of subsection (a) of this section; (2) engages in a conflict of interest in violation of the provisions of subchapter XVIII of this chapter; or (3) is convicted for an offense against the labor relations laws of the United States or of the District of Columbia, or for any other crime, which if committed in the District of Columbia would be a felony, which is by this or any other statute punishable by disqualification to hold office, in addition to the other punishment prescribed for such offenses, shall be removed from office as provided in this section.

(h) The procedure provided in subsection (c) of this section for filling a vacancy resulting from the expiration of a term of office shall be initiated at least 30 days prior to the expiration. If a vacancy occurs during a term due to removal, resignation, or death of a member, the new appointee's term of office shall be for the remainder of the unexpired term. Appointment procedures for such new appointees shall be those provided in subsection (c) of this section. No person shall serve for more than 2 consecutive terms.

(i) If at any time any matter comes before the Board in which any member has any interest, directly or indirectly, other than as that of a taxpayer, the member shall publicly so state and this statement shall be recorded in the minutes of that meeting. The member thereafter is disqualified from participation in the consideration of said matter.

(j) Each member of the Board is entitled to compensation as provided in § 1-611.12. Each member of the Board is expected to attend the regularly

scheduled meetings of the Board. Thus a member may be removed by the Mayor, as provided in subsection (g) of this section, for repeated failures to attend such meetings, thereby hindering the work of the Board.

(k) The Board may appoint such employees as may be required to conduct its business. The Board is authorized to request such appropriations as may be necessary to carry out its functions. Each employee of the Board, except the Executive Director, is in the Career Service as defined in subchapter VIII of this chapter. The Executive Director and the attorneys shall be in the Legal Service as defined in subchapter VIII-B of this chapter. The Executive Director shall be a resident of the District and shall remain a District resident for the duration of his or her employment by the Board. Failure to maintain District residency shall result in a forfeiture of the position.

(l) Three members of the Board shall constitute a quorum for the transaction of business.

(Mar. 3, 1979, D.C. Law 2-139, § 501, 25 DCR 5740; Oct. 20, 2005, D.C. Law 16-33, § 3018, 52 DCR 7503; Feb. 6, 2008, D.C. Law 17-108, § 203(b), 54 DCR 10993.)

Cross references. — Washington Convention Center employees, applicability of this subchapter, see § 10-1201.01 et seq.

Section references. — This section is referred to in §§ 1-523.01, 1-636.02, and 6-201.

Prior Codifications. — 1981 Ed., § 1-605.1.

1973 Ed., § 1-335.1.

Effect of amendments. — D.C. Law 16-33, in subsec. (k), added the third sentence.

D.C. Law 17-108, in subsec. (k), inserted the following two sentences: “The Executive Director shall be a resident of the District and shall remain a District resident for the duration of his or her employment by the Board. Failure to maintain District residency shall result in a forfeiture of the position.”

Emergency legislation. — For temporary (90 day) amendment of section, see § 3018 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of section, see § 2 of Public Employee Relations Board Holdover Extension Emergency Amendment Act of 2009 (D.C. Act 18-101, June 2, 2009, 56 DCR).

For temporary (90 day) amendment of section, see § 2 of Public Employee Relations Board Holdover Extension Emergency Amendment Act of 2011 (D.C. Act 19-74, June 22, 2011, 58 DCR 5373).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 1-617.17.

Legislative history of Law 17-108. — For Law 17-108, see notes following § 1-209.05.

References in text. — “The effective date of this subsection,” referred to in the second sentence of (a), is March 3, 1979.

CASE NOTES

Due Process.

Although District of Columbia Comprehensive Merit Personnel Act (CMPA) provided exclusive avenue for aggrieved District employees to pursue work-related complaints, CMPA did not foreclose court from entertaining District employee's claim that District and District offi-

cials violated her due process rights by allegedly terminating her worker's compensation benefits. *Deschamps v. District of Columbia*, 582 F.Supp.2d 14, 2008 U.S. Dist. LEXIS 85539 (2008), dismissed by 2009 U.S. Dist. LEXIS 3788 (D.D.C. Jan. 21, 2009).

§ 1-605.02. Powers of the Board.

The Board shall have the power to do the following:

- (1) Resolve unit determination questions and other representation issues

(including but not limited to disputes concerning the majority status of a labor organization);

(2) Certify and decertify exclusive bargaining representatives;

(3) Decide whether unfair labor practices have been committed and issue an appropriate remedial order;

(4) Resolve bargaining impasses through fact-finding, final and binding arbitration, or other methods agreed upon by the parties as approved by the Board and to remand disputes if it believes further negotiations are desirable. Arbitration shall not be conducted by the Board itself, but the Board shall provide arbitrators selected at random from a panel or list of arbitrators maintained by the Board and consisting of persons agreed upon by labor and management;

(5) Make a determination in disputed cases as to whether a matter is within the scope of collective bargaining;

(6) Consider appeals from arbitration awards pursuant to a grievance procedure; provided, however, that such awards may be modified or set aside or remanded, in whole or in part, only if the arbitrator was without, or exceeded, his or her jurisdiction; the award on its face is contrary to law and public policy; or was procured by fraud, collusion, or other similar and unlawful means; provided, further, that the provisions of this paragraph shall be the exclusive method for reviewing the decision of an arbitrator concerning a matter properly subject to the jurisdiction of the Board, notwithstanding any provisions of § 16-4401 et seq.;

(7) Conduct investigations, hear testimony, and take evidence under oath at hearings on any matter subject to its jurisdiction;

(8) Administer oaths or affirmations and through the power of subpoena, require the attendance of witnesses with any necessary records or other information which have a bearing on the dispute, without, however, abrogating rules and regulations abridging the confidentiality of personnel files as provided in subchapter XXXI of this chapter;

(9) Make decisions and take appropriate action on charges of failure to adopt, subscribe, or comply with the internal or national labor organization standards of conduct for labor organizations;

(10) Make recommendations concerning desirable revisions or amendments to the District government labor relations law;

(11) Adopt rules and regulations for the conduct of its business and the carrying out of its powers and duties;

(12) The Board may designate a 3-member panel to hear any matter brought to it under this chapter. The decision of the 3-member panel shall be considered the final decision of the Board. An appeal from a decision of any 3-member panel may be taken in accordance with the provisions of §§ 1-617.02 and 1-617.13;

(13) Establish and maintain a list of qualified mediators, fact finders and arbitrators after consulting with employee organizations and management representatives, and appoint them;

(14) Retain, through the Director of the Office of Contracting and Procurement, independent legal counsel to assist in Board activities when the

District government is a party to the Board's proceedings or in any other situation as the Board deems appropriate;

(15) Develop a system for the collection, maintenance, and dissemination of labor-management relations information as appropriate to the needs of the District, labor organizations, and the public; and

(16) Seek appropriate judicial process to enforce its orders and otherwise carry out its authority under this chapter. In cases of contumacy by any party or other delay or impediment of any character, the Board may seek any and all such judicial process or relief as it deems necessary to enforce and otherwise carry out its powers, duties and authority under this chapter.

(17) Notwithstanding any other provision of this section, all procurement authority shall be vested in the Office of Contracting and Procurement; provided, that the Mayor's obligations pursuant to § 1-204.49, to provide financial review and approval of contracts is unaffected.

(Mar. 3, 1979, D.C. Law 2-139, § 502, 25 DCR 5740; Apr. 12, 1997, D.C. Law 11-259, § 304(a), 44 DCR 1423; Sept. 18, 1998, D.C. Law 12-151, § 2(a), 45 DCR 4043; Apr. 12, 2000, D.C. Law 13-91, § 103(f), 47 DCR 520.)

Section references. — This section is referred to in §§ 1-636.02 and 6-215.

Prior Codifications. — 1981 Ed., § 1-605.2.

1973 Ed., § 1-335.2.

Effect of amendments. — D.C. Law 13-91, in subd. (6), inserted a comma following "or in part".

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 11-259. — Law 11-259, the "Procurement Reform Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-705, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996,

respectively. Signed by the Mayor on January 3, 1997, it was assigned Act No. 11-526 and transmitted to both Houses of Congress for its review. D.C. Law 11-259 became effective on April 12, 1997.

Legislative history of Law 12-151. — Law 12-151, the "Public Employee Relations Board Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-259, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on April 7, 1998, and May 5, 1998, respectively. Signed by the Mayor on May 22, 1998, it was assigned Act No. 12-368 and transmitted to both Houses of Congress for its review. D.C. Law 12-151 became effective on September 18, 1998.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-602.03.

CASE NOTES

ANALYSIS

Arbitration.

Exhaustion of administrative remedies.

Judicial review.

Jurisdiction.

Labor organizations, generally.

Ripeness.

Arbitration.

Limitations on Public Employee Relations Board's (PERB) authority to overturn arbitral award based on public policy flow, in considerable part, from fact that when parties have agreed to submit disputes to arbitration, they have bargained for arbitrator's construction of

the contract, not some other tribunal's. D.C. Pub. Empl. Rels. Bd. v. FOP/Metropolitan Police Dep't Labor Comm., 987 A.2d 1205, 2010 D.C. App. LEXIS 14 (2010).

Pursuant to the Comprehensive Merit Personnel Act (CMPA), the Public Employee Relations Board (PERB) may modify, set aside, or remand an arbitration award only where the award on its face is contrary to law and public policy, and the statutory reference to an award that "on its face is contrary to law and public policy" may include an award that is premised on a misinterpretation of law by the arbitrator that is apparent on its face. FOP/Dep't of Corr. Labor Comm. v. D.C. Pub. Empl. Rels. Bd., 973 A.2d 174, 2009 D.C. App. LEXIS 182 (2009).

Although arbitrator relied on Back Pay Act as the basis for awarding relief to correctional officers, whose removals were unwarranted, arbitrator overlooked the provision of the Act which required offset of interim earnings, and given this obvious incongruity, Public Employee Relations Board (PERB) was not unreasonable in concluding that arbitrator's award of back pay without offset was contrary to law, and PERB's decision was based on substantial evidence and reflected reasonable interpretation of Comprehensive Merit Personnel Act (CMPA), whereby PERB could modify, set aside, or remand arbitration award that, on its face, was contrary to law and public policy. *FOP/Dep't of Corr. Labor Comm. v. D.C. Pub. Empl. Rels. Bd.*, 973 A.2d 174, 2009 D.C. App. LEXIS 182 (2009).

Despite District of Columbia's enactment of Comprehensive Merit Protection Act (CMPA) for District employees, the federal Back Pay Act of 1966 continues to apply to District employees under the broader CMPA policies of maintaining all concrete personnel entitlements or benefits or their equivalents for employees hired before enactment of CMPA, and of maintaining pre-CMPA compensation system for all employees whenever hired until a new one is enacted to replace it. *AFGE v. D.C. Water & Sewer Auth.*, 942 A.2d 1108, 2007 D.C. App. LEXIS 650 (2007).

Public Employee Relations Board (PERB) has power to order union to pursue arbitration of employee's claim against employer if PERB concludes that union's refusal to arbitrate amounted to unfair labor practice (ULP). *D.C. Code 1981, § 1-605.2(3)*. *Board of Trustees, Univ. of the D.C. v. Myers*, 652 A.2d 642, 1995 D.C. App. LEXIS 7 (1995).

Exhaustion of administrative remedies.

District of Columbia employees' claim for defamation by conduct was foreclosed by District of Columbia Comprehensive Merit Personnel Act (CMPA); one employee neither pled nor argued she exhausted her administrative remedies under either of CMPA's two approved methods, and while two other employees triggered collective bargaining agreement (CBA) method of CMPA exhaustion by timely filing grievance in writing in accordance with provision of negotiated grievance procedure, after their Stage 2 grievance hearings were cancelled they did not proceed to final three steps of grievance procedure which culminate in arbitration, nor did they plead that they appealed any arbitration decision to Public Employee Relations Board. *Saint-Jean v. District of Columbia*, 846 F.Supp.2d 247, 2012 U.S. Dist. LEXIS 30445 (2012).

Even if Comprehensive Merit Personnel Act (CMPA) did not preclude police officers union, which prevailed in Public Employee Relations

Board (PERB) arbitration against Metropolitan Police Department (MPD), from seeking to confirm the award in the Superior Court under the Uniform Arbitration Act, doctrine of exhaustion of administrative remedies required union to exhaust its remedies before the PERB; under the CMPA union could have either petitioned the PERB to enforce its order affirming the arbitration award or could have challenged MPD's alleged resistance by filing an unfair labor practice complaint, requiring union to exhaust its administrative remedies would serve the policy functions behind the doctrine of exhaustion of administrative remedies, and there was every reason to believe the prescribed remedies would provide union with full redress. *D.C. Metro. Police Dep't v. FOP*, 997 A.2d 65, 2010 D.C. App. LEXIS 339 (2010).

While District of Columbia's Comprehensive Merit Protection Act (CMPA) provides that any person aggrieved by a final order of the District of Columbia Public Employees Relations Board (PERB) granting or denying in whole or in part the relief sought may obtain review of such order in the District of Columbia Superior Court, plaintiffs seeking relief from an unfair labor practice ordinarily must exhaust their administrative remedies with the Board before they may seek relief on arguable unfair labor practice claims in Superior Court. *AFGE v. D.C. Water & Sewer Auth.*, 942 A.2d 1108, 2007 D.C. App. LEXIS 650 (2007).

Government employees' union was required to exhaust its administrative remedies under District of Columbia's Comprehensive Merit Protection Act (CMPA), by appealing to District of Columbia Public Employees Relations Board (PERB), from arbitrator's denial of union's request for attorney fees under federal Back Pay Act of 1966 for successfully engaging in arbitration of grievances under collective bargaining agreement (CBA) on behalf of one of union's members who alleged an unfair labor practice, relating to suspension from his job at District of Columbia Water and Sewer Authority (WASA). *AFGE v. D.C. Water & Sewer Auth.*, 942 A.2d 1108, 2007 D.C. App. LEXIS 650 (2007).

Judicial review.

Appellate courts are obligated to defer to the Public Employee Relations Board's (PERB) interpretation of the Comprehensive Merit Personnel Act (CMPA) unless the interpretation is plainly erroneous. *FOP/Dep't of Corr. Labor Comm. v. D.C. Pub. Empl. Rels. Bd.*, 973 A.2d 174, 2009 D.C. App. LEXIS 182 (2009).

Appellate courts must defer to the factual findings of the Public Employee Relations Board (PERB) if they are supported by substantial evidence, and appellate courts defer to the Board's interpretation of the Comprehensive Merit Personnel Act (CMPA) unless the interpretation is unreasonable in light of the pre-

vailing law or inconsistent with the statute or is plainly erroneous. *FOP/Dep't of Corr. Labor Comm. v. D.C. Pub. Empl. Rels. Bd.*, 973 A.2d 174, 2009 D.C. App. LEXIS 182 (2009).

Although the appeal is from a review of agency action by the trial court, rather than a direct appeal to the appellate court, the appellate court will review the Public Employee Relations Board (PERB) decision as if the matter had been heard initially in the appellate court. *Gibson v. D.C. Pub. Empl. Rels. Bd.*, 785 A.2d 1238, 2001 D.C. App. LEXIS 246 (2001).

Determination by Public Employee Relations Board as to whether certain issues were mandatory subjects of negotiation would be upheld on judicial review unless determination was clearly erroneous or rationally indefensible. *D.C. Code 1981, § 1-605.2(12)*. *Drivers, Chauffeurs & Helpers Local Union No. 639 v. District of Columbia*, 631 A.2d 1205, 1993 D.C. App. LEXIS 237 (1993).

A doctor was prohibited from seeking redress directly from the Superior Court by the filing of a complaint for claims which actually constituted grievances. *Kaushiva v. University of D.C.*, 121 WLR 2401 (Super. Ct. 1993).

The Comprehensive Merit Personnel Act was intended to create a mechanism for addressing virtually every conceivable personnel issue among the District, its employees, and their unions, with a reviewing role for the courts as a last resort, not a supplementary role for the courts as an alternative forum. *Kaushiva v. University of D.C.*, 121 WLR 2401 (Super. Ct. 1993).

Jurisdiction.

District of Columbia employees' claim that labor union defendants breached duties of fair representation to employees fell within District of Columbia Comprehensive Merit Protection Act (CMPA) as an unfair labor practice, and thus Public Employee Relations Board (PERB), rather than district court, had jurisdiction to entertain the suit. *McManus v. District of Columbia*, 530 F.Supp.2d 46, 2007 U.S. Dist. LEXIS 94797 (2007).

Police officers union that prevailed in a Comprehensive Merit Personnel Act (CMPA) sanctioned arbitration with Metropolitan Police Department (MPD) was precluded, when MPD allegedly refused to comply with award issued by the Public Employee Relations Board

(PERB), from confirming the award in the Superior Court under the Uniform Arbitration Act, as the exclusive remedy for relief was provided by the CMPA, and union instead was required to seek relief before the PERB. *D.C. Metro. Police Dep't v. FOP*, 997 A.2d 65, 2010 D.C. App. LEXIS 339 (2010).

Labor organizations, generally.

Statute and regulations promulgated by Public Employee Relation Board empowered Board to review complaints alleging failure of recognized labor organization to comply with standards of conduct for labor organizations. *D.C. Code 1981, §§ 1-605.2(9), 1-618.3(c)*. *Fraternal Order of Police MPD Labor Committee v. Public Employee Relations Bd.*, 516 A.2d 501, 1986 D.C. App. LEXIS 460 (1986).

Ripeness.

Terminated District of Columbia correctional officer's motion to compel arbitration was unripe for judicial disposition, under doctrines of administrative exhaustion and primary jurisdiction; District of Columbia Comprehensive Merit Personnel Act (CMPA) empowered Public Employment Relations Board (PERB) to, inter alia, decide whether unfair labor practices had been committed and issue appropriate remedial order, and appeal to PERB on grounds that District's refusal to abide by valid collective bargaining agreement (CBA) constituted unfair labor practice was officer's appropriate remedy at that stage. *Johnson v. District of Columbia*, 244 F.R.D. 1, 2007 U.S. Dist. LEXIS 53338 (2007), affirmed in part by 2007 U.S. App. LEXIS 29623 (D.C. Cir. Dec. 18, 2007), affirmed by 552 F.3d 806, 384 U.S. App. D.C. 153, 2008 U.S. App. LEXIS 25855, 185 L.R.R.M. (BNA) 2684 (2008).

While District of Columbia's Comprehensive Merit Protection Act (CMPA) provides that any person aggrieved by a final order of the District of Columbia Public Employees Relations Board (PERB) granting or denying in whole or in part the relief sought may obtain review of such order in the District of Columbia Superior Court, plaintiffs seeking relief from an unfair labor practice ordinarily must exhaust their administrative remedies with the Board before they may seek relief on arguable unfair labor practice claims in Superior Court. *AFGE v. D.C. Water & Sewer Auth.*, 942 A.2d 1108, 2007 D.C. App. LEXIS 650 (2007).

§ 1-605.03. Transition procedures.

(a) The property and facilities of the Board of Labor Relations, established pursuant to Commissioner's Order 70-229, shall be transferred to the Public Employee Relations Board as provided in subchapter XXXVI of this chapter.

(b) The personnel and positions assigned to the Board of Labor Relations shall be transferred to the Public Employee Relations Board as provided in

subchapter XXXVI of this chapter: Provided, however, that incumbents of positions considered surplus to the needs of the Public Employee Relations Board may be separated in accordance with the provisions of subchapter XXIV of this chapter.

(c) All cases pending before the Board of Labor Relations shall be transferred to the Public Employee Relations Board on the effective date of subchapters V and XVII of this chapter as prescribed by § 1-636.02(i). The Public Employee Relations Board, with respect to any such transferred case, shall take such action as could have been taken by the Board of Labor Relations pursuant to labor-management relations programs as they existed when the case was filed, including those programs referred to in § 1-632.07(a).

(Mar. 3, 1979, D.C. Law 2-139, § 503, 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(d), 27 DCR 2632.)

Prior Codifications. — 1981 Ed., § 1-605.3.

1973 Ed., § 1-335.3.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see His-

torical and Statutory Notes following § 1-601.01.

Legislative history of Law 3-81. — For legislative history of D.C. Law 3-81, see Historical and Statutory Notes following § 1-602.02.

CASE NOTES

Due Process.

Although District of Columbia Comprehensive Merit Personnel Act (CMPA) provided exclusive avenue for aggrieved District employees to pursue work-related complaints, CMPA did not foreclose court from entertaining District employee's claim that District and District offi-

cials violated her due process rights by allegedly terminating her worker's compensation benefits. *Deschamps v. District of Columbia*, 582 F.Supp.2d 14, 2008 U.S. Dist. LEXIS 85539 (2008), dismissed by 2009 U.S. Dist. LEXIS 3788 (D.D.C. Jan. 21, 2009).

§ 1-605.04. Publication of decisions.

The Board shall cause a copy of each order, decision, or opinion rendered by it to be published in the District of Columbia Register within 60 days of its issuance.

(Mar. 3, 1979, D.C. Law 2-139, § 504, 25 DCR 5740.)

Cross references. — Election campaigns, conflict of interest, disclosure, see § 1-1106.02.

Employee deferred compensation programs, collective bargaining agreements, review, see § 47-3601.

Merit system, abolishment of positions for fiscal year 2000, see § 1-624.08.

Merit system, educational service, rules and regulations, see § 1-608.01a.

Merit system; effective date provisions, see § 1-636.02.

Prior Codifications. — 1981 Ed., § 1-605.4.

1973 Ed., § 1-335.4.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

CASE NOTES

Due Process.

Although District of Columbia Comprehensive Merit Personnel Act (CMPA) provided exclusive avenue for aggrieved District employees to pursue work-related complaints, CMPA did

not foreclose court from entertaining District employee's claim that District and District officials violated her due process rights by allegedly terminating her worker's compensation benefits. *Deschamps v. District of Columbia*,

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(2008), dismissed by 2009 U.S. Dist. LEXIS
3788 (D.D.C. Jan. 21, 2009).

Subchapter VI. Office of Employee Appeals.

§ 1-606.01. Establishment of the Office of Employee Appeals; composition; qualifications; term of office; vacancies; Chairperson; quorum; appeal procedure; conflict of interest; compensation; appointment of employees; expenditures; removal; exclusivity of position.

(a) There is established an Office of Employee Appeals (hereinafter referred to in this subchapter as the "Office"). The Office shall be composed of 5 members to be appointed by the Mayor in accordance with the provisions of subsection (b) of this section within 60 days of the date this chapter becomes effective as provided in § 1-636.02. Members of the Office shall have demonstrated knowledge concerning personnel management or labor relations, and a reputation for impartiality and integrity in the discharge of their responsibilities. No member shall be eligible for reappointment.

(b) The term of office of each member of the Office shall be 6 years: Except, that: (1) Of those members first appointed, 2 shall serve for 2 years and 3 shall serve for 4 years, respectively, from the date of appointment; and (2) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed for the remainder of such term. No member may serve beyond the expiration of his or her term, except that a member serving a term of less than 6 years, who was appointed under clause (1) of this subsection, or a member who is appointed to serve the remainder of an unexpired term of three years or less, who was appointed under clause (2) of this subsection, may be reappointed for a full 6-year term. Appointments to fill vacancies shall be made in accordance with the provisions of subsection (a) of this section. The Mayor shall designate the term of each member at the time of his or her appointment.

(c) The Chairperson of the Office shall be designated by the Mayor. The Chairperson shall be the chief executive of the Office. The Mayor shall from time to time designate 1 member as Vice Chairperson of the Office. During the absence or disability of the Chairperson, the Vice Chairperson shall perform the duties of the Chairperson.

(d) Three members of the Office shall constitute a quorum for the transaction of official business and the issuance of rules and regulations. The Office may hear appeals brought before it under this subchapter by a hearing examiner. An appeal from a decision of any such hearing examiner may be taken either to the full Office or to the Superior Court of the District of Columbia at the option of any adversely affected party. If an appeal is taken directly to the Superior Court of the District of Columbia, the decision of a hearing examiner, for the purposes of such appeal, shall be considered as the

final decision of the Office. If an appeal is taken from a decision of a hearing examiner to the full Office, the decision of the hearing examiner shall be stayed pending a final decision of the Office. Upon a vote of a majority of its members, the Office may hear de novo all issues of fact or law relating to an appeal of a decision of the hearing examiner, except the Office may decide to consider only the record made before such hearing examiner. A final decision of the full Office, relating to an appeal brought to it from a hearing examiner, shall be appealable to the Superior Court of the District of Columbia. Upon reviewing the final decision of the Office, the Court shall determine if it is supported by substantial evidence.

(e) If at any time any matter comes before the Office in which any member has any interest, directly or indirectly, other than as that of a taxpayer, the member shall publicly so state and this statement shall be recorded in the minutes of that meeting. The member thereafter is disqualified from participation in the consideration of the matter under deliberation.

(f) Each member of the Office is entitled to compensation at the rate of \$125 per diem or \$15.62 per hour whichever provides less, while actually in the service of the Office. Should a member serve in excess of 8 hours on a particular day, such member may be paid additional compensation for such period of service, to a maximum of 2 per diem payments for any consecutive 24-hour period. Adjustment to such rates of compensation shall be made in accordance with § 1-611.08(b), not to exceed the sum of \$20,000 per annum.

(g)(1) The Chairperson of the Office shall appoint:

(A)(i) An Executive Director;

(ii) The Executive Director shall be a District resident throughout his or her term and failure to maintain District residency shall result in a forfeiture of the position;

(B) A General Counsel, who shall report to the Executive Director.

(2) The Executive Director shall report to the Chairperson and shall:

(A) Manage all agency operations and programs that support the work of the Office;

(B) Make all final decisions regarding the performance of the Office's personnel, other than for the Executive Director and General Counsel, and fiscal management, general administrative support services, procurement, and contracts;

(C) Maintain the security of documents and claims; and

(D) Appoint other employees and make whatever expenditures are authorized to carry out the functions of the Office.

(3) The Office shall:

(A) Establish and maintain systems for the timely processing, recording, and control of cases;

(B) Maintain a data base system to record and provide information on the status and disposition of cases;

(C) Prepare and certify official records;

(D) Publish final decisions of the Office;

(E) Provide initial responses to Freedom of Information Act requests;

(F) Manage a formal system for the organization, maintenance, and disposition of Office records;

(G) Formulate and implement programs and policies that provide research assistance to the Office and the public; and

(H) Maintain an updated index of cases, to include among other things subject matter and outcome, to provide research assistance to the Office and the public.

(4) The General Counsel shall:

(A) Provide legal advice to the Office; and

(B) Assist in the enforcement of orders pursuant to § 1-606.09.

(h) The Office shall be considered an independent agency for budgetary and administrative purposes.

(i)(1) The Mayor may remove any member of the Office who engages in any activity prohibited by subsection (j) of this section, and appoint a new member to serve until the expiration of the term of the member so removed. When the Mayor believes that any member has engaged in any such activity he or she shall initiate an action, in the Superior Court of the District of Columbia in accordance with the provisions of § 16-3521 et seq., to remove such member.

(2) Any vacancy occurring in the Office shall be filled within 45 days after the occurrence of such vacancy excluding Saturdays, Sundays and legal holidays.

(3) The procedure provided for in subsections (a) and (b) of this section for filling a vacancy resulting from the expiration of a term of office shall be initiated at least 30 days prior to the expiration. If a vacancy occurs during a term due to removal, resignation or death of a member, the new appointee's term of office is the remainder of the unexpired term. Appointment procedures for such new appointees shall be those provided in subsections (a) and (b) of this section.

(j) Any member of the Office who: (1) Violates the provisions of subsection (k) of this section; (2) engages in a conflict of interest in violation of the provisions of subchapter XVIII of this chapter; or (3) is convicted of a crime, which if committed in the District of Columbia would be a felony, which is by this or any other statute punishable by disqualification to hold office, in addition to the other punishment prescribed for such offense, shall be removed from office as provided in this section.

(k) No member of the Office may hold any other position in the District government or any subordinate position in the Office.

(l) Notwithstanding the provisions of Unit A of Chapter 14 of Title 2, each qualified District resident applicant shall receive an additional 10-point preference over a qualified non-District resident applicant for all positions within the Office unless the applicant declines the preference. This 10-point preference shall be in addition to, and not instead of, qualifications established for the position. All persons hired after February 6, 2008, shall submit proof of residency upon employment in a manner determined by the Office. An applicant claiming the hiring preference under this section shall agree in writing to maintain bona fide District residency for a period of 7 consecutive years from the effective date of hire and shall provide proof of residency annually to the Director of Personnel for the first 7 years of employment. Failure to maintain District residency for the consecutive 7-year period shall

result in forfeiture of employment. The Office of Employee Appeals shall submit to the Mayor and Council annual reports detailing the names of all new employees and their pay schedules, titles, and place of residence.

(Mar. 3, 1979, D.C. Law 2-139, § 601, 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(e), 27 DCR 2632; Mar. 16, 1989, D.C. Law 7-200, § 2, 36 DCR 6; May 15, 1990, D.C. Law 8-127, § 2(b), 37 DCR 2093; Sept. 30, 2004, D.C. Law 15-189, § 2(a), 51 DCR 6734; Feb. 6, 2008, D.C. Law 17-108, § 203(c), 54 DCR 10993; Mar. 25, 2009, D.C. Law 17-353, § 223(c)(1), 56 DCR 1117.)

Cross references. — Employee deferred compensation program, see § 47-3601.

Freedom of information, see § 2-531 et seq.

Procurement, chief procurement officer, see § 2-301.05e.

Section references. — This section is referred to in §§ 1-606.11, 1-523.01, and 1-636.02.

Prior Codifications. — 1981 Ed., § 1-606.1.

1973 Ed., § 1-336.1.

Effect of amendments. — D.C. Law 15-189 rewrote subsec. (g)(1)(B) which had read as follows: “(g)(1)(B) A General Counsel.”

D.C. Law 17-108 rewrote subsec. (g)(1)(A); and added subsec. (l). Prior to amendment, subsec. (g)(1)(A) read as follows: “(A) An Executive Director; and”.

D.C. Law 17-353 validated a previously made technical correction in subsec. (l).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 3-81. — For legislative history of D.C. Law 3-81, see Historical and Statutory Notes following § 1-602.02.

Legislative history of Law 7-200. — Law 7-200 was introduced in Council and assigned Bill No. 7-564, which was referred to the Committee on Government Operations. The Bill

was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on December 21, 1988, it was assigned Act No. 7-265 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-127. — For legislative history of D.C. Law 8-127, see Historical and Statutory Notes following § 1-606.06.

Legislative history of Law 15-189. — Law 15-189, the “Office of Employee Appeals Amendment Act of 2004”, was introduced in Council and assigned Bill No. 15-568, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on May 4, 2004, and June 1, 2004, respectively. Signed by the Mayor on June 23, 2004, it was assigned Act No. 15-456 and transmitted to both Houses of Congress for its review. D.C. Law 15-189 became effective on September 30, 2004.

Legislative history of Law 17-108. — For Law 17-108, see notes following § 1-209.05.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 1-129.05.

References in text. — “The date this chapter becomes effective,” referred to in (a), is March 3, 1979.

The “Freedom of Information Act”, referred to in (g)(3)(E), is codified at 5 U.S.C. § 552.

CASE NOTES

ANALYSIS

Administrative review, generally.

Collateral estoppel.

Evidence.

—Hearsay, evidence.

—In general.

—Witnesses, evidence.

Exhaustion of administrative remedies.

Judicial review.

—In general.

—Standard of judicial review.

—Witnesses, judicial review.

Noneducational employees.

Administrative review, generally.

In the absence of a determination that the

administrative law judge (ALJ) misinterpreted the law or that the ALJ’s findings lacked substantial evidence, the Board of the Office of Employee Appeals (OEA) is not free to draw its own contrary conclusion, even if its determination is supported by substantial evidence. D.C. Dep’t of Pub. Works v. Colbert, 874 A.2d 353, 2005 D.C. App. LEXIS 211 (2005).

Order of the Board of the Office of Employee Appeals (OEA) vacating decision of the administrative law judge (ALJ), which overturned public employer’s decision to discharge department of public works employee for inexcusable neglect of duty and insubordination, would be set aside because Board failed to comply with the regulations governing the admission of ev-

idence and there were no permissible legal bases for overturning the ALJ's decision; Board did not determine that any of the ALJ's findings was unsupported by substantial evidence, but rather posited its own unidentified body of substantial evidence in support of employer's decision. *D.C. Dep't of Pub. Works v. Colbert*, 874 A.2d 353, 2005 D.C. App. LEXIS 211 (2005).

The scope of Office of Employee Appeals' (OEA) review of an agency decision is limited to simply ensuring that managerial discretion has been legitimately invoked and properly exercised. *D.C. Dep't of Pub. Works v. Colbert*, 874 A.2d 353, 2005 D.C. App. LEXIS 211 (2005).

In reviewing final agency decision, Office of Employee Appeals is not to substitute its judgment for that of the agency; its role is simply to ensure that managerial discretion has been legitimately invoked and properly exercised. *D.C. Code 1981, §§ 1-606.1, 1-606.3. Stokes v. District of Columbia*, 502 A.2d 1006, 1985 D.C. App. LEXIS 542 (1985).

Collateral estoppel.

Doctrine of issue preclusion, or collateral estoppel, did not require that certain aspects of Figard, where Office of Employee Appeals (OEA) administrative judge ruled that removal was inappropriate penalty for 911 operator who mishandled 911 call, apply to case of fire department employee who was fired for failing to enter 911 call into department's computer system; although issues underlying employee's termination might be somewhat similar, they were not identical to issues underlying operator's termination in Figard. *Hutchinson v. District of Columbia Office of Empl. Appeals*, 710 A.2d 227, 1998 D.C. App. LEXIS 82 (1998).

Issue preclusion applies to agency proceedings in certain circumstances, but doctrine only precludes parties from relitigating issue actually decided in previous, final adjudication. *Hutchinson v. District of Columbia Office of Empl. Appeals*, 710 A.2d 227, 1998 D.C. App. LEXIS 82 (1998).

Evidence.

— Hearsay, evidence.

Hearsay evidence may be admitted in administrative hearings. *Hutchinson v. District of Columbia Office of Empl. Appeals*, 710 A.2d 227, 1998 D.C. App. LEXIS 82 (1998).

Administrative tribunals are not required to disregard evidence merely because it is hearsay. *Hutchinson v. District of Columbia Office of Empl. Appeals*, 710 A.2d 227, 1998 D.C. App. LEXIS 82 (1998).

Fire department employee had no "absolute right" to exclude hearsay evidence from Office of Employee Appeals (OEA) proceeding reviewing department's dismissal of employee for inefficiency. *Hutchinson v. District of Columbia*

Office of Empl. Appeals, 710 A.2d 227, 1998 D.C. App. LEXIS 82 (1998).

Deputy fire chief's testimony in earlier proceeding about employee's removal was admissible in Office of Employee Appeals (OEA) proceeding reviewing fire department's dismissal of employee for inefficiency, despite fact that it was hearsay; deputy chief was too sick to appear at OEA proceeding, bulk of his testimony was corroborated by other facts in record, he was cross-examined by employee when giving prior testimony, and prior testimony was sworn. *Hutchinson v. District of Columbia Office of Empl. Appeals*, 710 A.2d 227, 1998 D.C. App. LEXIS 82 (1998).

— In general.

Substantial evidence supported Office of Employee Appeals' (OEA) determination that employee suffered no substantial prejudice as a result of the agency's procedural error in not giving employee thirty days notice that his position was being abolished as a result of a reduction in force (RIF). *Harding v. D.C. Office of Empl. Appeals*, 887 A.2d 33, 2005 D.C. App. LEXIS 636 (2005).

Rules of evidence in administrative hearings are more relaxed than those governing judicial proceedings. *Hutchinson v. District of Columbia Office of Empl. Appeals*, 710 A.2d 227, 1998 D.C. App. LEXIS 82 (1998).

— Witnesses, evidence.

Administrative factfinder need not give any reason at all for his credibility determinations. *Hutchinson v. District of Columbia Office of Empl. Appeals*, 710 A.2d 227, 1998 D.C. App. LEXIS 82 (1998).

Exhaustion of administrative remedies.

Police officer's claims against District of Columbia for defamation, negligent infliction of emotional distress, and other claims based on public posting of administrative complaint officer had submitted regarding inappropriate sexual advance by another, which complaint had been altered to suggest that officer had made inappropriate advance, constituted "grievance" within meaning of Comprehensive Merit Personnel Act (CMPA) and thus, officer had to exhaust administrative remedies as prerequisite to filing action in Superior Court. *Lattisaw v. District of Columbia*, 905 A.2d 790, 2006 D.C. App. LEXIS 495 (2006).

Judicial review.

— In general.

Court of Appeals must conduct the identical review of the Office of Employee Appeals' (OEA) decision that Court would undertake if appeal had been heard initially in Court. *Harding v. D.C. Office of Empl. Appeals*, 887 A.2d 33, 2005 D.C. App. LEXIS 636 (2005).

While it is the Office of Employee Appeals' (OEA) final decision and not that of the administrative law judge (ALJ) that may be reviewed by Court of Appeals, the ALJ's findings of fact are binding at all subsequent levels of review unless they are not supported by substantial evidence. *D.C. Dep't of Pub. Works v. Colbert*, 874 A.2d 353, 2005 D.C. App. LEXIS 211 (2005).

Substantial evidence did not support Office of Employee Appeals' (OEA) decision to dismiss employee's petition for appeal, seeking review of his termination through alleged reduction in force, and not to allow discovery and hold hearing upon employee's detailed allegations of improper employment actions; employee alleged that employing agency first transferred him, after number of years in career service position, to the excepted service and then transferred him out of excepted service and back to newly created career service supervisory position with no one to supervise, and then, a few weeks later, abolished the very position it had specifically created for him. *Levitt v. D.C. Office of Empl. Appeals*, 869 A.2d 364, 2005 D.C. App. LEXIS 50 (2005).

Although physician's reports about District of Columbia employee's sinusitis were insufficient to excuse employee's seven weeks of absence from work without leave, lack of transcript of proceeding before the Office of Employee Appeals (OEA) or comprehensive summary of employee's testimony precluded Court of Appeals from deciding whether the OEA determination, overturning employee's termination, was supported by substantial evidence or not. *Murchison v. D.C. Dep't of Pub. Works*, 813 A.2d 203, 2002 D.C. App. LEXIS 736 (2002).

Failure of the Office of Employee Appeals (OEA) to make findings on material, contested issues of fact required remand to OEA to make specific factual findings regarding whether, and to what extent, employee was incapacitated by her sinus ailments and unable to work at her job with District of Columbia Department of Public Works during her seven week absence without leave. *Murchison v. D.C. Dep't of Pub. Works*, 813 A.2d 203, 2002 D.C. App. LEXIS 736 (2002).

Although employee appealed from Superior Court's review of Office of Employee Appeals' (OEA) decision, Court of Appeals would review administrative decision as if appeal had been taken directly to Court of Appeals. *Hutchinson v. District of Columbia Office of Empl. Appeals*, 710 A.2d 227, 1998 D.C. App. LEXIS 82 (1998).

Court of Appeals reviews Office of Employee Appeals' (OEA) findings under substantial evidence test, and "substantial evidence" is defined as such relevant evidence as reasonable mind might accept as adequate to support conclusion. *Hutchinson v. District of Columbia Office of Empl. Appeals*, 710 A.2d 227, 1998 D.C. App. LEXIS 82 (1998).

In Office of Employee Appeals (OEA) proceeding reviewing fire department's dismissal of employee, substantial evidence supported OEA administrative judge's conclusion that employee's inefficiency, and not computer malfunction, was why 911 call was not entered into department's computer system; employee's shift supervisor explained that system generated printout of all properly-entered calls, but that employee's call did not appear on printout. *Hutchinson v. District of Columbia Office of Empl. Appeals*, 710 A.2d 227, 1998 D.C. App. LEXIS 82 (1998).

Office of Employee Appeals (OEA) administrative judge's decision that terms "penalty proposed" and "penalty" referred to initial penalty proposed by proposing official, as opposed to penalty recommended by disinterested designee, was permissible interpretation of those terms as they were used in regulation providing that deciding official shall either sustain penalty proposed, reduce it, or dismiss action with or without prejudice, but shall not increase penalty. D.C. Mun. Regs. title 34, § 1614.4. *Hutchinson v. District of Columbia Office of Empl. Appeals*, 710 A.2d 227, 1998 D.C. App. LEXIS 82 (1998).

— Standard of judicial review.

Appellate court must accord great weight to any reasonable construction by the Office of Employee Appeals (OEA) of statute which it administers. *Harding v. D.C. Office of Empl. Appeals*, 887 A.2d 33, 2005 D.C. App. LEXIS 636 (2005).

Even though the case was on appeal from the Superior Court's ruling setting aside order of the Board of the Office of Employee Appeals, affirming employer's decision to discharge department of public works employee, Court of Appeals would review the decision of the Board as if the appeal had been taken directly to the Court of Appeals, and thus, Court of Appeals would examine the agency record to determine whether there was substantial evidence to support Board's findings of fact and whether Board's action was arbitrary, capricious, or an abuse of discretion. *D.C. Dep't of Pub. Works v. Colbert*, 874 A.2d 353, 2005 D.C. App. LEXIS 211 (2005).

Court of Appeals reviews the Office of Employee Appeals' (OEA) decision directly. *Levitt v. D.C. Office of Empl. Appeals*, 869 A.2d 364, 2005 D.C. App. LEXIS 50 (2005).

Although the initial review of the decision of the District of Columbia Office of Employee Appeals (OEA) was in superior court, on appeal the Court of Appeals' scope of review was precisely the same as in administrative appeals coming to the Court directly. *Murchison v. D.C. Dep't of Pub. Works*, 813 A.2d 203, 2002 D.C. App. LEXIS 736 (2002).

Because District of Columbia Comprehensive Merit Personnel Act (CMPA) was administered by the Office of Employee Appeals, rather than by university, Court of Appeals accorded little or no deference to university's interpretation of the CMPA; on the other hand, Court gave considerable deference to university's interpretation of its own regulations governing reductions in force (RIF). *Harrison v. Board of Trustees of the Univ. of the District of Columbia*, 758 A.2d 19, 2000 D.C. App. LEXIS 194 (2000).

Court of Appeals must sustain agency's interpretation of statute, even if petitioner advances another reasonable interpretation of statute or if court might have been persuaded by alternate interpretation had it been construing statute in first instance. *Hutchinson v. District of Columbia Office of Empl. Appeals*, 710 A.2d 227, 1998 D.C. App. LEXIS 82 (1998).

Court of Appeals will defer to agency's interpretation of statute it administers, unless interpretation conflicts with plain meaning of statute or its legislative history. *Hutchinson v. District of Columbia Office of Empl. Appeals*, 710 A.2d 227, 1998 D.C. App. LEXIS 82 (1998).

If Office of Employee Appeals' (OEA) findings are supported by substantial evidence, then

Court of Appeals must accept them, even if there is substantial evidence in record to support contrary findings. *Hutchinson v. District of Columbia Office of Empl. Appeals*, 710 A.2d 227, 1998 D.C. App. LEXIS 82 (1998).

— Witnesses, judicial review.

When reviewing Office of Employee Appeals' (OEA) decision, Court of Appeals gives great deference to any credibility determinations of OEA. *Hutchinson v. District of Columbia Office of Empl. Appeals*, 710 A.2d 227, 1998 D.C. App. LEXIS 82 (1998).

Noneducational employees.

University rule providing that employee may file appeal if employee believes that university has incorrectly applied reduction in force rules and regulations confers right of appeal to Office of Employee Appeals only to noneducational employees, in light of provisions of the Government Comprehensive Merit Personnel Act on appeals of reduction in force, from which educational employees are expressly excluded. D.C. Code 1981, §§ 1-602.3(b), 1-606.1 et seq., 1-606.3, 1-609.1(b)(1). *Davis v. University of Dist. of Columbia*, 603 A.2d 849, 1992 D.C. App. LEXIS 34 (1992).

§ 1-606.02. Authority; duties of the Office.

(a) The Office shall have, in addition to the authority necessary and proper for carrying out its duties as specified elsewhere in this subchapter, the authority to:

(1) Appoint and remove employees of the Office, subject to applicable provisions of this chapter;

(2) Hear and adjudicate appeals received from District agencies and from employees as provided in this subchapter;

(3) Issue an annual report on the activities of the Office to the Mayor and Council which should include, at a minimum, the following:

(A) The number and nature of cases heard by the Office, and the type of order issued in each case;

(B) The number of appeals heard by Office panels and the disposition of such appeal or type of order issued in each case;

(C) The number of appeals taken to Superior Court of the District of Columbia (both directly and from Office panels) and the disposition of or status of each case; and

(D) A statement of the amount of time taken to reach a final disposition of each case brought before the Office and a statement of the number of backlogged cases, if any;

(4) Compel the appearance of witnesses and production of documents by subpoena, enforceable by the Office in the Superior Court of the District of Columbia;

(5) Issue any rules and regulations necessary to carry out its duties under this chapter; and

(6) Order any agency or employee of the government of the District of Columbia to comply with an order or decision issued by the Office under the authority of this chapter and to enforce compliance with the order or decision.

(b) Any performance rating, grievance, adverse action or reduction-in-force review, which has been included within a collective bargaining agreement under the provisions of subchapter XVII of this chapter, shall not be subject to the provisions of this subchapter.

(Mar. 3, 1979, D.C. Law 2-139, § 602, 25 DCR 5740; May 15, 1990, D.C. Law 8-127, § 2(c), 37 DCR 2093.)

Section references. — This section is referred to in §§ 1-606.11 and 1-636.02.

Prior Codifications. — 1981 Ed., § 1-606.2.

1973 Ed., § 1-336.2.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 8-127. — For legislative history of D.C. Law 8-127, see Historical and Statutory Notes following § 1-606.06.

Editor's notes. — Section 4 of D.C. Law 8-127 provided that the Office shall file a report on the operation of the Office with the Mayor and Council by Oct. 31, 1990. The report shall include the following:

Office of Employee Appeals Amendment Rules and Regulations Approval and Disapproval Resolution of 1992: Pursuant to Resolution 9-263, effective June 19, 1992, the Council approved, in part, and disapproved, in part, the proposed rules to amend the Office of Employee Appeals rules and regulations.

Office to file report: (1) The number of appeals filed with the Office;

(2) The number of appeals sent to arbitration;

(3) The number of decisions made by the Office;

(4) The number of backlog appeals;

(5) The costs incurred by the government of the District of Columbia for appeals sent to arbitration; and.

(6) The time taken to process all appeals within the Office and by arbitration.

CASE NOTES

Due Process.

Although District of Columbia Comprehensive Merit Personnel Act (CMPA) provided exclusive avenue for aggrieved District employees to pursue work-related complaints, CMPA did not foreclose court from entertaining District employee's claim that District and District offi-

cials violated her due process rights by allegedly terminating her worker's compensation benefits. *Deschamps v. District of Columbia*, 582 F.Supp.2d 14, 2008 U.S. Dist. LEXIS 85539 (2008), dismissed by 2009 U.S. Dist. LEXIS 3788 (D.D.C. Jan. 21, 2009).

§ 1-606.03. Appeal procedures.

(a) An employee may appeal a final agency decision affecting a performance rating which results in removal of the employee (pursuant to subchapter XIII-A of this chapter), an adverse action for cause that results in removal, reduction in force (pursuant to subchapter XXIV of this chapter), reduction in grade, placement on enforced leave, or suspension for 10 days or more (pursuant to subchapter XVI-A of this chapter) to the Office upon the record and pursuant to other rules and regulations which the Office may issue. Any appeal shall be filed within 30 days of the effective date of the appealed agency action.

(b) In any appeal taken pursuant to this section, the Office shall review the record and uphold, reverse, or modify the decision of the agency. The Office may order oral argument, on its own motion or on motion filed by any party

within 15 days, and provide such other procedures or rules and regulations as it deems practicable or desirable in any appeal under this section.

(c) All decisions of the Office shall include findings of fact and a written decision, as well as the reasons or basis for the decision upon all material issues of fact and law presented on record, and order; provided, however, that the Office may affirm a decision without findings of fact and a written decision. Such decisions shall be published in accordance with the rules and regulations of the Office, and shall be published in the District of Columbia Register. Any decision by a Hearing Examiner shall be made within 120 days, excluding Saturdays, Sundays, and legal holidays, from the date of the appellant's filing of the appeal with the Office. Within 45 days, excluding Saturdays, Sundays, and legal holidays, after the appeal is filed with the Office, the Office shall determine whether, in accordance with this section and the Office's own rules, the Office has jurisdiction. Any decision shall include a statement of any further process available to the appellant including, as appropriate, a petition for review or a petition for enforcement and judicial review. Copies of the decision shall be immediately transmitted to the Office and all parties to the appeal, including named parties and intervenors. The initial decision of the Hearing Examiner shall become final 35 days after issuance, unless a party files a petition for review of the initial decision with the Office within the 35-day filing period. In accordance with § 1-604.04, the Office may promulgate rules to allow a Hearing Examiner a reasonable extension of time if extraordinary circumstances dictate that an appeal cannot be decided within the 120-day period. After issuing the initial decision, the Hearing Examiner shall retain jurisdiction over the case only to the extent necessary to correct the record, rule on a motion for attorney fees, or process any petition for enforcement filed under the authority of the Office. If the Office denies all petitions for review, the initial decision shall become final upon the issuance of the last denial. If the Office grants a petition for review, the subsequent decision of the Office shall be the final decision of the Office unless the decision states otherwise. Administrative remedies are considered exhausted when a decision becomes final in accordance with this section.

(d) Any employee or agency may appeal the decision of the Office to the Superior Court of the District of Columbia for a review of the record and such Court may affirm, reverse, remove, or modify such decision, or take any other appropriate action the Court may deem necessary.

(Mar. 3, 1979, D.C. Law 2-139, § 603, 25 DCR 5740; May 15, 1990, D.C. Law 8-127, § 2(d), 37 DCR 2093; June 10, 1998, D.C. Law 12-124, § 101(d)(1), 45 DCR 2464; June 19, 2001, D.C. Law 13-313, § 2(b), 48 DCR 1873; May 18, 2004, D.C. Law 15-162, § 2(a), 51 DCR 3628; Sept. 30, 2004, D.C. Law 15-189, § 2(b), 51 DCR 6734.)

Section references. — This section is referred to in § 1-606.11.

Prior Codifications. — 1981 Ed., § 1-606.3.

1973 Ed., § 1-336.3.

Effect of amendments. — D.C. Law 13-313, in subsec. (a), deleted "or a reduction-in-force (pursuant to subchapter XXIV of this chapter" following "(pursuant to subchapter XVI-A of this chapter).".

D.C. Law 15-162, in subsec. (a), substituted "reduction in grade, placement on enforced leave," for "reduction in grade,".

D.C. Law 15-189, in subsec. (a), added ", reduction in force (pursuant to subchapter XXIV of this chapter)" after "that results in removal".

Emergency legislation. — For temporary amendment of section, see § 101(d) of the Omnibus Personnel Reform Amendment Act of 1998 (D.C. Act 12-326, April 1, 1998, 45 DCR 2464).

For temporary amendment of § 401 of the Omnibus Personnel Reform Amendment Act of 1998 (D.C. Law 12-124), see § 2 of the Personnel Reform Technical Amendment Emergency Act of 1998 (D.C. Act 12-520, December 4, 1998, 45 DCR 9049).

For temporary (90-day) amendment of section, see § 3 of the Safe Teenage Driving and Merit Personnel Technical Amendment Emergency Amendment Act of 2000 (D.C. Act 13-430, August 14, 2000, 47 DCR 7459).

For temporary (90 day) amendment of section, see § 3 of the Safe Teenage Driving and Merit Personnel Technical Amendment Legislative Review Emergency Amendment Act of 2000 (D.C. Act 13-489, December 18, 2000, 48 DCR 43).

For temporary (90 day) amendment of section, see § 3 of the Safe Teenage Driving and Merit Personnel Technical Amendment Legislative Review Emergency Amendment Act of 2000 (D.C. Act 13-489, December 18, 2000, 48 DCR 43).

For temporary (90 day) amendment of section, see § 3 of Safe Teenage Driving and Merit Personnel Technical Amendment Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-30, April 2, 2001, 48 DCR 3336).

For temporary (90 day) amendment of section, see § 2(a) of Technical Amendments Emergency Act of 2001 (D.C. Act 14-108, August 3, 2001, 48 DCR 7622).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see His-

torical and Statutory Notes following § 1-601.01.

Legislative history of Law 8-127. — For legislative history of D.C. Law 8-127, see Historical and Statutory Notes following § 1-606.06.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Legislative history of Law 13-313. — For Law 13-313, see notes following § 1-307.67.

Legislative history of Law 15-162. — Law 15-162, the "Enforced Leave Amendment Act of 2004", was introduced in Council and assigned Bill No. 15-391, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on February 3, 2004, and March 2, 2004, respectively. Signed by the Mayor on March 18, 2004, it was assigned Act No. 15-397 and transmitted to both Houses of Congress for its review. D.C. Law 15-162 became effective on May 18, 2004.

Legislative history of Law 15-189. — For Law 15-189, see notes following § 1-606.01.

Editor's notes. — Applicability of § 101(d) of D.C. Law 12-124: Section 401(a) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(d), (k), (p), (s), and (x) of the act shall apply upon the enactment of legislation by the United States Congress that states the following:

"Notwithstanding any other law, section 101(d), (k), (p), (s), and (x) of the Omnibus Personnel Reform Act of 1998, effective June 10, 1998 (D.C. Law 12-124; 45 DCR 2464) are enacted into law."

Section 134 of Title I of Division C of Pub. L. 105-277, 112 Stat. 2861-596, provided that "Notwithstanding any other law, sections 101(d), (k), (p), (s), and (x) of the Omnibus Personnel Reform Amendment Act of 1998, D.C. Law 12-124, effective June 11, 1998, are enacted into law."

CASE NOTES

ANALYSIS

Administrative review.
Civil rights actions.
Collateral estoppel.
Delay in rendering decision.
Due process of law.
Exhaustion of remedies.
Injunction.
Judicial review.
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Procedures, generally.

Administrative review.

Appeal by former civilian employee of metropolitan police department to Office of Employee Appeals (OEA) of his intra-departmental reassignment and change of duties was rendered moot as result of there being no meaningful relief available to former employee; only reinstatement relief former employee sought was to be returned to former position, but former position no longer existed. *Settlemyre v. District of Columbia Office of Empl. Appeals*, 898 A.2d 902, 2006 D.C. App. LEXIS 212 (2006).

While it is the Office of Employee Appeals' (OEA) final decision and not that of the admin-

istrative law judge (ALJ) that may be reviewed by Court of Appeals, the ALJ's findings of fact are binding at all subsequent levels of review unless they are not supported by substantial evidence. D.C. Dep't of Pub. Works v. Colbert, 874 A.2d 353, 2005 D.C. App. LEXIS 211 (2005).

The scope of Office of Employee Appeals' (OEA) review of an agency decision is limited to simply ensuring that managerial discretion has been legitimately invoked and properly exercised. D.C. Dep't of Pub. Works v. Colbert, 874 A.2d 353, 2005 D.C. App. LEXIS 211 (2005).

Order of the Board of the Office of Employee Appeals (OEA) vacating decision of the administrative law judge (ALJ), which overturned public employer's decision to discharge department of public works employee for inexcusable neglect of duty and insubordination, would be set aside because Board failed to comply with the regulations governing the admission of evidence and there were no permissible legal bases for overturning the ALJ's decision; Board did not determine that any of the ALJ's findings was unsupported by substantial evidence, but rather posited its own unidentified body of substantial evidence in support of employer's decision. D.C. Dep't of Pub. Works v. Colbert, 874 A.2d 353, 2005 D.C. App. LEXIS 211 (2005).

Collective bargaining agreement (CBA) between police officer's union and Metropolitan Police Department (MPD) barred evidentiary hearing before Office of Employee Appeals (OEA) as to whether officer's conduct warranted termination, given that hearing was previously conducted before MPD trial board; CBA provided that appeal to OEA would be based solely on record established in trial board hearing and Comprehensive Merit Personnel Act (CMPA) provides that systems for review of adverse actions set forth in CBA must take precedence over standard OEA procedures. D.C. Metro. Police Dep't v. Pinkard, 801 A.2d 86, 2002 D.C. App. LEXIS 319 (2002).

Police officers who were denied administrative sick leave by Metropolitan Police Department were entitled to have their claims considered by Office of Employee Appeals despite their failure to timely appeal denial to OEA, where Department had failed to inform officers of their right to OEA review. D.C. Code 1981, §§ 1-601.1 et seq., 1-603.1(10), 1-606.3, 1-606.4(e), 1-613.3(j). District of Columbia v. Daniels, 523 A.2d 569, 1987 D.C. App. LEXIS 325 (1987).

In reviewing final agency decision, Office of Employee Appeals is not to substitute its judgment for that of the agency; its role is simply to ensure that managerial discretion has been legitimately invoked and properly exercised. D.C. Code 1981, §§ 1-606.1, 1-606.3. Stokes v. District of Columbia, 502 A.2d 1006, 1985 D.C. App. LEXIS 542 (1985).

Civil rights actions.

District of Columbia's Office of Employee

Appeals (OEA) proceedings, together with availability of judicial review in District of Columbia's courts, did not present adequate forum in which former government employee could fully and fairly pursue his § 1983 claim that his discharge violated his constitutional and statutory rights, and therefore Younger doctrine of equitable restraint did not require dismissal of former government employee's federal action, even assuming District of Columbia was state for purposes of Younger doctrine of equitable restraint, as former government employee sought millions of dollars in compensatory and punitive damages on his § 1983 claims, and OEA and District of Columbia's courts were authorized by statute to grant only reinstatement with back pay and some associated benefits, but not punitive and compensatory damages. D.C. Code 1981, § 1-606.3(a, b). Bridges v. Kelly, 84 F.3d 470, 1996 U.S. App. LEXIS 12861 (C.A.D.C. 1996), dismissed by 977 F. Supp. 503, 1997 U.S. Dist. LEXIS 15788 (D.D.C. 1997).

Former civilian employee of metropolitan police department was not entitled to removal of documents from his personnel file, and thus fact that former employee sought removal of documents from his personnel file that related to his intra-departmental reassignment did not preclude finding that former employee's appeal to Office of Employee Appeals (OEA) of his reassignment was moot because position former employee sought to be reassigned to no longer existed; former employee's reassignment was not disciplinary or other adverse action against him, and there was no evidence that anything in his personnel record was false or inaccurate. Settlemire v. District of Columbia Office of Empl. Appeals, 898 A.2d 902, 2006 D.C. App. LEXIS 212 (2006).

Collateral estoppel.

District court would be required, on remand, to determine preclusive effect of issues of fact decided by police department panel, in recommending arrestee's removal from police department, had on arrestee's claims against United States Park Police officer as result of arrest, given uncertainty in appellate record, particularly with respect to scope and pace of administrative appeal. D.C. Code 1981, § 1-606.3(a). Martin v. Malhoyt, 830 F.2d 237, 1987 U.S. App. LEXIS 13267 (C.A.D.C. 1987).

Delay in rendering decision.

Statutory time frame within which the Office of Employee Appeals (OEA) is to render its decision is directory rather than mandatory. D.C. Code 1981, § 1-606.3. Anjuwan v. District of Columbia Dep't of Pub. Works, 729 A.2d 883, 1998 D.C. App. LEXIS 256 (1998).

Failure of the Office of Employee Appeals (OEA) to render its decision upholding the

reduction in force (RIF) at the Department of Public Works (DPW) within 120 days did not render DPW's termination of employee based on RIF invalid; DPW should not be penalized for OEA's delay absent some concrete showing of prejudice to former employee's ability to contest the RIF, fact that employee lost his job did not demonstrate the requisite prejudice, and employee's claims were meritless. D.C. Code 1981, § 1-606.3. *Anjuwan v. District of Columbia Dept of Pub. Works*, 729 A.2d 883, 1998 D.C. App. LEXIS 256 (1998).

Due process of law.

Although District of Columbia Comprehensive Merit Personnel Act (CMPA) provided exclusive avenue for aggrieved District employees to pursue work-related complaints, CMPA did not foreclose court from entertaining District employee's claim that District and District officials violated her due process rights by allegedly terminating her worker's compensation benefits. *Deschamps v. District of Columbia*, 582 F.Supp.2d 14, 2008 U.S. Dist. LEXIS 85539 (2008), dismissed by 2009 U.S. Dist. LEXIS 3788 (D.D.C. Jan. 21, 2009).

Police officer was not denied due process when he was suspended without pay based upon his indictment for manslaughter, where officer was not suspended until after notice and hearing and was informed that he could appeal his suspension. D.C. Code 1981, §§ 1-606.3(d), 1-617.1(c); U.S. Const.Amend. 5. *Hairston v. District of Columbia*, 638 F. Supp. 198, 1986 U.S. Dist. LEXIS 23658 (1986).

To challenge his termination, former hearing examiner for the District of Columbia Department of Motor Vehicles was required under the Comprehensive Merit Personnel Act (CMPA) to bring an appeal before the Office of Employee Appeals (OEA) and, thus, superior court had no jurisdiction over former examiner's common law claim for wrongful termination and §§ 1983 claim for violation of due process; under CMPA, former hearing examiner's sole recourse to challenge his termination was an appeal to the OEA, with judicial review by the superior court. *Lewis v. D.C. DMV*, 987 A.2d 1134, 2010 D.C. App. LEXIS 22 (2010).

Exhaustion of remedies.

District court would treat as moot issue of whether former District of Columbia employee exhausted her administrative remedies before suing under Comprehensive Merit Personnel System Act (CMPA); issue of exhaustion was raised in District's first motion for summary judgment, District asserted that Office of Employee Appeals (OEA) ALJ's determination became final, it did not revisit exhaustion in its second motion for summary judgment, and it could not resurrect issue in motion in limine.

Owens v. District of Columbia, 2012 WL 2873945 (2012).

District of Columbia employees' claim for defamation by conduct was foreclosed by District of Columbia Comprehensive Merit Personnel Act (CMPA); one employee neither pled nor argued she exhausted her administrative remedies under either of CMPA's two approved methods, and while two other employees triggered collective bargaining agreement (CBA) method of CMPA exhaustion by timely filing grievance in writing in accordance with provision of negotiated grievance procedure, after their Stage 2 grievance hearings were cancelled they did not proceed to final three steps of grievance procedure which culminate in arbitration, nor did they plead that they appealed any arbitration decision to Public Employee Relations Board. *Saint-Jean v. District of Columbia*, 846 F.Supp.2d 247, 2012 U.S. Dist. LEXIS 30445 (2012).

Former District of Columbia Metropolitan Police Department (MPD) employee's defamation claims pertaining to statements made in relation to her termination were subject to District of Columbia Comprehensive Merit Personnel Act's (CMPA) exhaustion requirement. *Owens v. District of Columbia*, 631 F.Supp.2d 48, 2009 U.S. Dist. LEXIS 58013 (2009).

Remedial provisions of Comprehensive Merit Protection Act (CMPA) governed conduct underpinning emotional distress claim of former employees which arose out of their dispute with their former employer, and thus exhaustion of administrative remedies was required before suit could be filed. *Washington v. District of Columbia*, 538 F.Supp.2d 269, 2008 U.S. Dist. LEXIS 20447 (2008).

Allegedly defamatory statements made by director of District of Columbia Department of Corrections (DOC) regarding culpability of former employees for jail escape sufficiently related to "personnel" issue to require administrative exhaustion under employee grievance provisions of Comprehensive Merit Protection Act (CMPA) prior to filing suit, although statements were made outside of formal administrative process for handling removal for cause. *Washington v. District of Columbia*, 538 F.Supp.2d 269, 2008 U.S. Dist. LEXIS 20447 (2008).

When tort claims are predicated upon conduct that may be a proper subject of a grievance under the Comprehensive Merit Protection Act (CMPA), the exclusivity principles attendant to CMPA administrative remedies will preclude litigation of claims such as emotional distress and defamation prior to exhaustion of administrative remedies. *Washington v. District of Columbia*, 538 F.Supp.2d 269, 2008 U.S. Dist. LEXIS 20447 (2008).

Administrative exhaustion under Comprehensive Merit Protection Act (CMPA) was re-

quired of claims that were predicated on alleged failure of District of Columbia Department of Corrections (DOC) to comply with procedural requirements for adverse actions against employees, such as requirement of timely notice or prohibition on imposing penalty greater than that recommended by pre-termination hearing ALJ for Office of Employee Appeals (OEA), before former employees could bring action in federal court alleging violation of their due process civil rights, since CMPA provided remedy for such claims in disciplinary actions. *Washington v. District of Columbia*, 538 F.Supp.2d 269, 2008 U.S. Dist. LEXIS 20447 (2008).

Employees who had been terminated in response to escape of two prisoners could not litigate §§ 1983 claims in federal court based on alleged failure of District of Columbia Department of Corrections (DOC) to follow termination procedures in alleged violation of their due process rights until they administratively exhausted their grievance arbitration according to terms of collective bargaining agreement (CBA), or through review by Office of Employee Appeals (OEA) according to terms of Comprehensive Merit Protection Act (CMPA). *Washington v. District of Columbia*, 538 F.Supp.2d 269, 2008 U.S. Dist. LEXIS 20447 (2008).

District of Columbia system could not grant full relief to terminated police officer in connection with his federal civil rights claims, and officer was accordingly not required to file claim through District of Columbia's Office of Employee Appeals (OEA) to exhaust administrative remedies under the District of Columbia Comprehensive Merit Personnel Act (CMPA) before filing federal suit; officer requested compensatory and punitive damages that OEA was not authorized to grant, and OEA's administrative forum could not have provided full and fair opportunity to litigate federal claims. *Crockett v. D.C. Metro. Police Dep't*, 293 F.Supp.2d 63, 2003 U.S. Dist. LEXIS 23632 (2003).

Employee of District of Columbia Public Schools (DCPS) did not exhaust his administrative remedies by appealing his suspension to DCPS Chancellor, rather than appealing to the Office of Employee Appeals (OEA), prior to bringing suit in the Superior Court; Comprehensive Merit Personnel Act (CMPA) required employee to file appeal with OEA before filing complaint in Superior Court, and Board of Education regulation providing that employee gave up right to appeal to Chancellor if he exercised other appeal rights did not give DCPS employee option to appeal to either OEA or Chancellor. *Thompson v. District of Columbia*, 978 A.2d 1240, 2009 D.C. App. LEXIS 373 (2009).

Mayor was not entitled to dismissal of plaintiff's suit based on absolute immunity from liability for defamation on appeal from order

dismissing suit that was based solely on plaintiff's failure to exhaust administrative remedies under Comprehensive Merit Personnel Act. *Jones v. Williams*, 861 A.2d 1269, 2004 D.C. App. LEXIS 620 (2004), amended by, remanded by 890 A.2d 178, 2005 D.C. App. LEXIS 208 (D.C. 2005), remanded sub nomine *District of Columbia v. Jones*, 919 A.2d 604, 2007 D.C. App. LEXIS 151 (D.C. 2007).

Fact that police officer's failure to exhaust his administrative remedies before filing wrongful constructive discharge and emotional distress claims against District of Columbia and his former supervisors was attributable to officer's lack of knowledge of the process, rather than any compelling circumstances, was not sufficient to permit appellate court to ignore or overlook the exhaustion of administrative remedies requirement of the District of Columbia Government Comprehensive Merit Personnel Act (CMPA). *Burton v. District of Columbia*, 835 A.2d 1076, 2003 D.C. App. LEXIS 685 (2003).

Former university employee's claim that termination as part of reduction in force (RIF) was unlawful because his job had been erroneously classified into class providing less advantageous RIF procedures than had his previous classification was precluded by failure to exhaust administrative remedies at time of his promotion and reclassification over a year previously; requiring exhaustion would serve the purposes of the exhaustion doctrine by providing courts with expertise of Office of Employee Appeals (OEA) on classification issue, and timely grievance would have allowed university to redefine the duties of the position to remove uncertainty about its classification. D.C. Code 1981, §§ 1-603.1, 1-606.3(a), 1-612.1, 1-612.11; D.C.Mun.Reg. title 8, §§ 1600.3, 1600.5, 1600.6, 1600.7. *Gilmore v. Board of Trustees of the Univ. of the District of Columbia*, 695 A.2d 1164, 1997 D.C. App. LEXIS 119 (1997).

Injunction.

Employees suspended with pay from District of Columbia Department of Corrections (DOC) did not demonstrate substantial likelihood of success on merits, as would support preliminary injunction ordering District not to terminate them while their civil suit challenging constitutionality of ongoing disciplinary procedures was pending; employees did not exhaust administrative remedies, either through labor arbitration or through administrative appeal, and provided no legal authority to support position that "do over" termination proceeding was unconstitutional. *Washington v. District of Columbia*, 530 F.Supp.2d 163, 2008 U.S. Dist. LEXIS 1823 (2008).

Judicial review.

Confining itself strictly to administrative record, Court of Appeals reviews decision of Office

of Employee Appeals (OEA), not Superior Court's decision, and Court of Appeals must affirm OEA's decision so long as it is supported by substantial evidence in record and is otherwise in accordance with law. *Settlemire v. District of Columbia Office of Empl. Appeals*, 898 A.2d 902, 2006 D.C. App. LEXIS 212 (2006).

Substantial evidence supported Office of Employee Appeals' (OEA) determination that employee suffered no substantial prejudice as a result of the agency's procedural error in not giving employee thirty days notice that his position was being abolished as a result of a reduction in force (RIF). *Harding v. D.C. Office of Empl. Appeals*, 887 A.2d 33, 2005 D.C. App. LEXIS 636 (2005).

Appellate court must accord great weight to any reasonable construction by the Office of Employee Appeals (OEA) of statute which it administers. *Harding v. D.C. Office of Empl. Appeals*, 887 A.2d 33, 2005 D.C. App. LEXIS 636 (2005).

Court of Appeals must conduct the identical review of the Office of Employee Appeals' (OEA) decision that Court would undertake if appeal had been heard initially in Court. *Harding v. D.C. Office of Empl. Appeals*, 887 A.2d 33, 2005 D.C. App. LEXIS 636 (2005).

Even though the case was on appeal from the Superior Court's ruling setting aside order of the Board of the Office of Employee Appeals, affirming employer's decision to discharge department of public works employee, Court of Appeals would review the decision of the Board as if the appeal had been taken directly to the Court of Appeals, and thus, Court of Appeals would examine the agency record to determine whether there was substantial evidence to support Board's findings of fact and whether Board's action was arbitrary, capricious, or an abuse of discretion. *D.C. Dep't of Pub. Works v. Colbert*, 874 A.2d 353, 2005 D.C. App. LEXIS 211 (2005).

Substantial evidence did not support Office of Employee Appeals' (OEA) decision to dismiss employee's petition for appeal, seeking review of his termination through alleged reduction in force, and not to allow discovery and hold hearing upon employee's detailed allegations of improper employment actions; employee alleged that employing agency first transferred him, after number of years in career service position, to the excepted service and then transferred him out of excepted service and back to newly created career service supervisory position with no one to supervise, and then, a few weeks later, abolished the very position it had specifically created for him. *Levitt v. D.C. Office of Empl. Appeals*, 869 A.2d 364, 2005 D.C. App. LEXIS 50 (2005).

Although the initial review of the decision of the District of Columbia Office of Employee Appeals (OEA) was in superior court, on appeal

the Court of Appeals' scope of review was precisely the same as in administrative appeals coming to the Court directly. *Murchison v. D.C. Dep't of Pub. Works*, 813 A.2d 203, 2002 D.C. App. LEXIS 736 (2002).

Failure of the Office of Employee Appeals (OEA) to make findings on material, contested issues of fact required remand to OEA to make specific factual findings regarding whether, and to what extent, employee was incapacitated by her sinus ailments and unable to work at her job with District of Columbia Department of Public Works during her seven week absence without leave. *Murchison v. D.C. Dep't of Pub. Works*, 813 A.2d 203, 2002 D.C. App. LEXIS 736 (2002).

Although review of Office of Employee Appeals' (OEA) decision, that police department violated Comprehensive Merit Personnel Act (CMPA) by imposing discipline without providing employee an opportunity to respond to proposed action against him, was initially in Superior Court, Court of Appeals would employ the same scope of review as in administrative cases that come directly to the Court. *D.C. Code 1981, §§ 1-601.1 to 1-637.2, 1-606.3(d). District of Columbia Metro. Police Dep't v. Perry*, 638 A.2d 1138, 1994 D.C. App. LEXIS 32 (1994).

On appeal of superior court order reversing decision of Office of Employee Appeals (OEA), Court of Appeals examines agency record to determine whether there is substantial evidence to support OEA's findings of fact, or whether OEA's action was arbitrary, capricious, or abuse of discretion. *D.C. Code 1981, § 1-606.3(d). District of Columbia Metro. Police Dep't v. Perry*, 638 A.2d 1138, 1994 D.C. App. LEXIS 32 (1994).

Jurisdiction.

District court did not have subject matter jurisdiction over teacher's claim that District of Columbia Public Schools breached her employment contract by unfairly evaluating and terminating her, as claim fell squarely within bounds of District of Columbia's Comprehensive Merit Personnel Act (CMPA) and was under jurisdiction of District of Columbia's Office of Employee Appeals (OEA). *Bowers v. District of Columbia*, 2011 WL 2160945 (2011).

Office of Employee Appeals (OEA) has exclusive appellate jurisdiction over claims against the District of Columbia arising under the Comprehensive Merit Personnel Act (CMPA). *D.C. Code 1981, § 1-606.3. Grillo v. District of Columbia*, 731 A.2d 384, 1999 D.C. App. LEXIS 127 (1999).

Noneducational employees.

University rule providing that employee may file appeal if employee believes that university has incorrectly applied reduction in force rules and regulations confers right of appeal to Office

of Employee Appeals only to noneducational employees, in light of provisions of the Government Comprehensive Merit Personnel Act on appeals of reduction in force, from which educational employees are expressly excluded. D.C. Code 1981, §§ 1-602.3(b), 1-606.1 et seq., 1-606.3, 1-609.1(b)(1). *Davis v. University of Dist. of Columbia*, 603 A.2d 849, 1992 D.C. App. LEXIS 34 (1992).

Probationary employees.

Substantive and procedural protections against adverse employment actions provided to full time career employees of District of Columbia do not apply to employee who is serving probationary period; such employees may, under District of Columbia law, be fired at will and without administrative appeal. D.C. Code 1981, §§ 1-606.3(b), 1-617.1. *Fox v. District of Columbia*, 83 F.3d 1491, 1996 U.S. App. LEXIS 11527 (C.A.D.C. 1996).

If employee prevails in showing erroneous assumption of probationary status, for purposes of determining whether employee is entitled to substantive and procedural protections afforded full-time career employees of District of Columbia, Office of Employee Appeals proceeds to hear substantive appeal or offer relief commensurate with career status. D.C. Code 1981, §§ 1-606.3(b), 1-617.1. *Fox v. District of Columbia*, 83 F.3d 1491, 1996 U.S. App. LEXIS 11527 (C.A.D.C. 1996).

A probationary employee had no right to have his discharge reviewed by the Office of Employee Appeals (OEA) which has jurisdiction over "adverse actions" (which includes discharges) affecting a career service employee who is not serving a probationary period. *Davis v. Lambert*, 119 WLR 305 (Super. Ct. 1991).

Procedures, generally.

To the extent that District of Columbia employees' claims against District and labor unions substantively challenged their alleged

terminations or the denial of their workers' compensation claims, such claims could only be asserted via mechanisms provided by District of Columbia Comprehensive Merit Protection Act (CMPA) before Public Employee Relations Board (PERB), and not in an action before district court. *McManus v. District of Columbia*, 530 F.Supp.2d 46, 2007 U.S. Dist. LEXIS 94797 (2007).

Trial court had the power to go beyond the pretrial order, and court did not abuse its discretion when it went beyond pretrial order, which failed to mention police officer's failure to exhaust his administrative remedies as required by the District of Columbia Government Comprehensive Merit Personnel Act (CMPA), and considered District of Columbia's exhaustion defense to officer's claims for wrongful constructive discharge and emotional distress; officer was on notice that exhaustion issue could arise at trial when District raised it as defense in its answer, officer could not reasonably have been prejudiced, and officer, through counsel, agreed to let issue be tried. *Burton v. District of Columbia*, 835 A.2d 1076, 2003 D.C. App. LEXIS 685 (2003).

Superior Court Civil Rule providing that petition for review from decision of agency under District of Columbia Comprehensive Merit Personnel Act must be filed within 30 days after formal notice did not apply to petition for review of Office of Human Rights determination brought by discharged employee of privately owned company. Court of Appeals Rule 15(a); D.C. Code 1981, § 1-606.3(d). *Simpson v. District of Columbia Office of Human Rights*, 597 A.2d 392, 1991 D.C. App. LEXIS 266 (1991).

Once the University of the District of Columbia made a prima facie showing that it followed proper procedures and considered the correct subjective criteria, the burden should have shifted to the applicant for tenure to show her entitlement to promotion. *University of D.C. v. Ausbrooks*, 117 WLR 721 (Super. Ct. 1989).

§ 1-606.04. Agency hearing procedures.

(a) The personnel authority shall establish internal rules and regulations, not inconsistent with the procedures of this subchapter, for conducting hearings affecting individual employees whose removal is proposed or effected for cause pursuant to subchapter XVI-A of this chapter.

(b) The personnel authority shall provide for 15 days advance notice in writing stating the specific reasons for the proposed action prior to an adverse action against an employee for cause that results in removal, a reduction in grade, or a suspension of 10 days or more. This provision may be waived by the agency head if the employee's conduct threatens the integrity of government operations, constitutes an immediate hazard to the agency, to other employees of the government, or to the employee, or to the public health, safety, or welfare.

(c) The personnel authority shall provide that any employee whose removal from service, reduction in grade, or suspension of 10 days or more is proposed, or whose removal is effected pursuant to § 1-616.51(5) have the following rights:

- (1) To review any material upon which the proposal or action is based;
- (2) To prepare a written response to the notice provided in subsection (b) of this section, including affidavits and other documentation;
- (3) To be represented by an attorney or other representative; and
- (4) To be heard, as provided in subsection (d) of this section in the case of a removal.

(d) The personnel authority shall provide an administrative review by a hearing officer appointed by the agency head of a proposed removal action or a removal action pursuant to § 1-616.51(5) including the employee's response, if any, and may provide for an adversary hearing and the confrontation of witnesses.

(e) The personnel authority shall provide the employee with a written decision following the review provided in subsection (d) of this section, and shall advise each employee of his or her right to appeal to the Office as provided in this subchapter.

(Mar. 3, 1979, D.C. Law 2-139, § 604, 25 DCR 5740; June 10, 1998, D.C. Law 12-124, § 101(d)(2), 45 DCR 2464; Apr. 12, 2000, D.C. Law 13-91, § 103(g), 47 DCR 520.)

Section references. — This section is referred to in § 1-606.05.

Prior Codifications. — 1981 Ed., § 1-606.4.

1973 Ed., § 1-336.4.

Effect of amendments. — D.C. Law 13-91, in subsec. (a), substituted "subchapter XVII-A" for "subchapter XVII".

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-602.03.

Delegation of Authority. — Delegations and sub-delegations of authority—Director of Personnel, Chief of Police, and Agency Heads—Rescission of Mayor's Orders 80-78, 92-114,

99-79 and Deletion of Part I of Mayor's Order 97-88, see Mayor's Order 2000-83, May 30, 2000 (47 DCR 4956).

Editor's notes. — Applicability of § 101(d) of D.C. Law 12-124: Section 401(a) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(d), (k), (p), (s), and (x) of this act shall apply upon the enactment of legislation by the United States Congress that states the following:

"Notwithstanding any other law, section 101(d), (k), (p), (s), and (x) of the Omnibus Personnel Reform Act of 1998, effective June 10, 1998, (D.C. Law 12-124; 45 DCR 2464) are enacted into law." Section 134 of Title I of Division C of Pub. L. 105-277, 112 Stat. 2681-596, provided that

"Notwithstanding any other law, sections 101(d), (k), (p), (s), and (x) of the Omnibus Personnel Reform Amendment Act of 1998, D.C. Law 12-124, effective June 11, 1998, are enacted into law."

CASE NOTES

ANALYSIS

Administrative review.
Career employees.
Disciplinary proceedings, generally.

Exhaustion of remedies.
First Amendment rights.
Judicial review.
Limitations period.
Notice of adverse action.

Probationary employees.
Removal for cause.
Standard of review.

Administrative review.

Police officers who were denied administrative sick leave by Metropolitan Police Department were entitled to have their claims considered by Office of Employee Appeals despite their failure to timely appeal denial to OEA, where Department had failed to inform officers of their right to OEA review. D.C. Code 1981, §§ 1-601.1 et seq., 1-603.1(10), 1-606.3, 1-606.4(e), 1-613.3(j). *District of Columbia v. Daniels*, 523 A.2d 569, 1987 D.C. App. LEXIS 325 (1987).

Career employees.

Permanent career employees of District of Columbia may be fired only for cause, and then only in accordance with comprehensive scheme of regulations intended to create mechanism for addressing virtually every conceivable personnel issue among District, its employees, and their unions. D.C. Code 1981, § 1-617.1 et seq. *Fox v. District of Columbia*, 83 F.3d 1491, 1996 U.S. App. LEXIS 11527 (C.A.D.C. 1996).

Substantive and procedural protections against adverse employment actions provided to full time career employees of District of Columbia do not apply to employee who is serving probationary period; such employees may, under District of Columbia law, be fired at will and without administrative appeal. D.C. Code 1981, §§ 1-606.3(b), 1-617.1. *Fox v. District of Columbia*, 83 F.3d 1491, 1996 U.S. App. LEXIS 11527 (C.A.D.C. 1996).

Disciplinary proceedings, generally.

Civilian Complaint Review Board (CCRB) Act did not supersede in all respects those provisions of Comprehensive Merit Personnel Act (CMPA) relating to disciplinary proceedings within agency. D.C. Code 1981, §§ 1-601.1 to 1-637.2, 4-901 to 4-911. *District of Columbia Metro. Police Dep't v. Perry*, 638 A.2d 1138, 1994 D.C. App. LEXIS 32 (1994).

Exhaustion of remedies.

Proper procedure, when Board of Education fails to inform disgruntled teacher of right to appeal Board's decision to Office of Employee Appeals (OEA), with result that teacher fails to exhaust administrative remedies and appeals Board's decision directly to superior court, is remand for review by OEA without any prejudice for teacher's failure to exhaust administrative remedies. D.C. Code 1981, § 1-606.4(e). *Montgomery v. District of Columbia*, 598 A.2d 162, 1991 D.C. App. LEXIS 285 (1991).

First Amendment rights.

Constitutional propriety of firing government employee on basis of speech depends on balance

between interests of employee, as citizen, in commenting upon matters of public concern and interest of state, as employer, in promoting efficiency of public services it performs through its employees. U.S.C. Const.Amend. 1. *Fox v. District of Columbia*, 83 F.3d 1491, 1996 U.S. App. LEXIS 11527 (C.A.D.C. 1996).

Threshold inquiry in determining constitutional propriety of firing government employee on basis of speech is whether speech for which employee claims he was fired is about matter of public concern, i.e. of political, social, or other concern to community, looking at content, form, and context, of given statement, as revealed by whole record; this inquiry is question of law for court to resolve. U.S.C. Const.Amend. 1. *Fox v. District of Columbia*, 83 F.3d 1491, 1996 U.S. App. LEXIS 11527 (C.A.D.C. 1996).

Public employee's report to police of theft of money from agency that employed him was matter of public concern, as required for his firing for making that report to violate his First Amendment rights. U.S. Const.Amend. 1. *Fox v. District of Columbia*, 83 F.3d 1491, 1996 U.S. App. LEXIS 11527 (C.A.D.C. 1996).

Fact that public employee's statement was not covered by media does not affect analysis of whether his firing over that statement violated his First Amendment rights; employee is not constitutionally penalized for making sensitive report discreetly and without fanfare or for failing to elicit media's interest, since editors are not gatekeepers for employees' First Amendment rights. U.S. Const.Amend. 1. *Fox v. District of Columbia*, 83 F.3d 1491, 1996 U.S. App. LEXIS 11527 (C.A.D.C. 1996).

Judicial review.

Even if employee never voiced complaint, to district court, that he was falsely told by employer that he had no appeal rights, his employer made no objection to complaint in court of appeals and thus waived any waiver of that point. *Fox v. District of Columbia*, 83 F.3d 1491, 1996 U.S. App. LEXIS 11527 (C.A.D.C. 1996).

District of Columbia's Office of Employee Appeals' decisions on appeal of permanent career employee's "adverse action" may be appealed to district's courts. *Fox v. District of Columbia*, 83 F.3d 1491, 1996 U.S. App. LEXIS 11527 (C.A.D.C. 1996).

Substantial evidence did not support Office of Employee Appeals' (OEA) decision to dismiss employee's petition for appeal, seeking review of his termination through alleged reduction in force, and not to allow discovery and hold hearing upon employee's detailed allegations of improper employment actions; employee alleged that employing agency first transferred him, after number of years in career service position, to the excepted service and then transferred him out of excepted service and back to newly created career service supervisory posi-

tion with no one to supervise, and then, a few weeks later, abolished the very position it had specifically created for him. *Levitt v. D.C. Office of Empl. Appeals*, 869 A.2d 364, 2005 D.C. App. LEXIS 50 (2005).

Although recognizing that it could only affirm administrative agency's decision for reasons given by the agency, Court of Appeals would look to recommendations of hearing examiners in effort to more fully understand precise meaning of Office of Employee Appeals' (OEA) determination, that Civilian Complaint Review Board (CCRB) Act did not supersede in all respects those provisions of Comprehensive Merit Personnel Act (CMPA) relating to disciplinary proceedings within agency, because OEA affirmed recommendations of examiners and indicated agreement therewith. D.C. Code 1981, §§ 1-601.1 to 1-637.2, 4-901 to 4-911. *District of Columbia Metro. Police Dep't v. Perry*, 638 A.2d 1138, 1994 D.C. App. LEXIS 32 (1994).

Court of Appeals can only affirm administrative agency's decision for reasons given by agency. *District of Columbia Metro. Police Dep't v. Perry*, 638 A.2d 1138, 1994 D.C. App. LEXIS 32 (1994).

Concept of special knowledge and expertise of agency that underlies rule according deference to agency in its interpretation of statute that it is empowered to administer and enforce had less applicability with respect to Court of Appeals review of Office of Employee Appeals' (OEA) decision interpreting and reconciling Comprehensive Merit Personal Act (CMPA) with Civilian Complaint Review Board (CCRB) Act since OEA did not administer CCRB Act. D.C. Code 1981, §§ 1-601.1 to 1-637.2, 4-901 to 4-911. *District of Columbia Metro. Police Dep't v. Perry*, 638 A.2d 1138, 1994 D.C. App. LEXIS 32 (1994).

Although review of Office of Employee Appeals' (OEA) decision, that police department violated Comprehensive Merit Personnel Act (CMPA) by imposing discipline without providing employee an opportunity to respond to proposed action against him, was initially in Superior Court, Court of Appeals would employ the same scope of review as in administrative cases that come directly to the Court. D.C. Code 1981, §§ 1-601.1 to 1-637.2, 1-606.3(d). *District of Columbia Metro. Police Dep't v. Perry*, 638 A.2d 1138, 1994 D.C. App. LEXIS 32 (1994).

Court of Appeals will defer to agency's interpretation of enabling statute and regulations promulgated thereunder unless interpretation is unreasonable or contrary to statute. *Grant v. District of Columbia*, 545 A.2d 1262, 1988 D.C. App. LEXIS 151 (1988).

As is true for trial court, Court of Appeals' review of decision of District of Columbia Office of Employee Appeals is limited to determination of whether there is substantial evidence to

support it. *Grant v. District of Columbia*, 545 A.2d 1262, 1988 D.C. App. LEXIS 151 (1988).

Limitations period.

District of Columbia employee's claim, that employer's false assertion that he had no right to appeal his termination caused him to let limitations period applicable to appeal run and thus denied him due process, was not ripe, where there was strong reason to believe that Office of Employee Appeals would waive of limitations period and avail employee of process of which he claimed to be due. U.S. Const. Amends. 5, 14; D.C. Code 1981, § 1-602.5. *Fox v. District of Columbia*, 83 F.3d 1491, 1996 U.S. App. LEXIS 11527 (C.A.D.C. 1996).

Notice of adverse action.

Although public employee was usually entitled to 30 days' notice of proposed adverse action under District of Columbia regulation, Office of Employee Appeals did not err in interpreting regulation, providing exception to 30-day notice requirement when there is reasonable cause to believe employee conduct constitutes immediate hazard to agency or other employees, to cover employee who threatened to do bodily harm with a knife while he was at work. *Grant v. District of Columbia*, 545 A.2d 1262, 1988 D.C. App. LEXIS 151 (1988).

Probationary employees.

If employee prevails in showing erroneous assumption of probationary status, for purposes of determining whether employee is entitled to substantive and procedural protections afforded full-time career employees of District of Columbia, Office of Employee Appeals proceeds to hear substantive appeal or offer relief commensurate with career status. D.C. Code 1981, §§ 1-606.3(b), 1-617.1. *Fox v. District of Columbia*, 83 F.3d 1491, 1996 U.S. App. LEXIS 11527 (C.A.D.C. 1996).

Removal for cause.

Substantial evidence supported decision of District of Columbia Office of Employee Appeals to terminate employee; various employees testified about discharged employee's actions and threats to do bodily harm with a knife while he was at work. *Grant v. District of Columbia*, 545 A.2d 1262, 1988 D.C. App. LEXIS 151 (1988).

Standard of review.

Genuine issues of material fact as to whether District of Columbia Metropolitan Police Department (MPD) employee's evidentiary hearing was de novo hearing, and regardless of standard of review used by Office of Employee Appeals (OEA) ALJ, whether hearing was sufficient to satisfy procedural due process, precluded summary judgment on employee's § 1983 claim against District predicated on

that violation. *Owens v. District of Columbia*, 2012 WL 2873945 (2012).

§ 1-606.05. Authority of Council to issue rules mandated by § 1-606.04(a).

The officers of the Council of the District of Columbia may issue rules, subject to approval by the Council of the District of Columbia, concerning review of central staff employee personnel appeals as mandated in § 1-606.04(a).

(Oct. 24, 1981, D.C. Law 4-48, § 6, 28 DCR 4276; Apr. 30, 1988, D.C. Law 7-104, § 31, 35 DCR 147.)

Prior Codifications. — 1981 Ed., § 1-606.5.

Legislative history of Law 4-48. — Law 4-48 was introduced in Council and assigned Bill No. 4-176, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on June 30, 1981 and July 14,

1981, respectively. Signed by the Mayor on August 6, 1981, it was assigned Act No. 4-83 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-104. — For legislative history of D.C. Law 7-104, see Historical and Statutory Notes following § 1-604.08.

CASE NOTES

Due Process.

Although District of Columbia Comprehensive Merit Personnel Act (CMPA) provided exclusive avenue for aggrieved District employees to pursue work-related complaints, CMPA did not foreclose court from entertaining District employee's claim that District and District offi-

cials violated her due process rights by allegedly terminating her worker's compensation benefits. *Deschamps v. District of Columbia*, 582 F.Supp.2d 14, 2008 U.S. Dist. LEXIS 85539 (2008), dismissed by 2009 U.S. Dist. LEXIS 3788 (D.D.C. Jan. 21, 2009).

§ 1-606.06. Mediation and settlement.

(a) The Office shall develop a mediation program. Matters involving the following adverse actions shall undergo mediation through the program:

- (1) The removal;
- (2) The reduction in grade;
- (3) The suspension of 10 days or more;
- (4) The placement on enforced leave lasting 10 days or more; and
- (5) Any other appeal the Hearing Examiner considers appropriate for mediation.

(b) Settlement of the dispute may be raised by the Hearing Examiner with the parties at any time. If the parties agree to a settlement without a decision on the merits of the case, a settlement agreement, prepared and signed by all parties, shall constitute the final and binding resolution of the appeal, and the Hearing Examiner shall dismiss the appeal with prejudice.

(Mar. 3, 1979, D.C. Law 2-139, § 605, as added May 15, 1990, D.C. Law 8-127, § 2(e), 37 DCR 2093; June 10, 1998, D.C. Law 12-124, § 101(d)(3), 45 DCR 2464; Sept. 14, 2011, D.C. Law 19-21, § 1042, 58 DCR 6226.)

Section references. — This section is referred to in § 1-606.11.

Prior Codifications. — 1981 Ed., § 1-606.6.

Effect of amendments. — D.C. Law 19-21 rewrote subsec. (a), which had read as follows: “(a) The Office may, in its discretion, develop a mediation program.”

Legislative history of Law 8-127. — Law 8-127 was introduced in Council and assigned Bill No. 8-482, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on February 13, 1990, and February 27, 1990, respectively. Signed by the Mayor on March 15, 1990, it was assigned Act No. 8-180 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 1-301.01.

Short title. — Short title: Section 1041 of D.C. Law 19-21 provided that subtitle D of title I of the act may be cited as “Office of Employee Appeals Mandatory Mediation Amendment Act of 2011”.

Editor’s notes. — Applicability of § 101(d) of D.C. Law 12-124: Section 401(a) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(d), (k), (p), (s), and (x) of this act shall apply upon the enactment of legislation by the United States Congress that states the following: “Notwithstanding any other law, section 101(d), (k), (p), (s), and (x) of the Omnibus Personnel Reform Act of 1998, effective June 10, 1998, (D.C. Law 12-124; 45 DCR 2464) are enacted into law.”

Section 134 of Title I of Division C of Pub. L. 105-277, 112 Stat. 2861-596, provided that “Notwithstanding any other law, sections 101(d), (k), (p), (s), and (x) of the Omnibus Personnel Reform Amendment Act of 1998, D.C. Law 12-124, effective June 11, 1998, are enacted into law.”

CASE NOTES

Due Process.

Although District of Columbia Comprehensive Merit Personnel Act (CMPA) provided exclusive avenue for aggrieved District employees to pursue work-related complaints, CMPA did not foreclose court from entertaining District employee’s claim that District and District offi-

cials violated her due process rights by allegedly terminating her worker’s compensation benefits. *Deschamps v. District of Columbia*, 582 F.Supp.2d 14, 2008 U.S. Dist. LEXIS 85539 (2008), dismissed by 2009 U.S. Dist. LEXIS 3788 (D.D.C. Jan. 21, 2009).

§ 1-606.07. Arbitration.

(a) The parties may agree in writing to arbitrate the dispute rather than have the Office adjudicate the case. An agreement by the parties to arbitrate the dispute must be reached within 30 days, excluding Saturdays, Sundays, and legal holidays, of the date the appeal was filed with the Office. Failure to reach an agreement to arbitrate shall result in the appeal being adjudicated by the Office.

(b) If the parties agree to arbitrate the dispute, the Office shall immediately forward the matter to the American Arbitration Association (“AAA”). The dispute shall be arbitrated in accordance with the Voluntary Labor Arbitration Rules of the AAA, except that a hearing on the dispute shall be held no later than 60 days from the date the dispute is referred to AAA.

(c) When an employee who is a party to the dispute is not a member of a collective bargaining unit, the District shall bear the filing fee and the costs of the arbitration, including the arbitrator’s fee. When an employee who is a party to the dispute is a member of a collective bargaining unit, the terms of the collective bargaining agreement and § 1-616.52(d) shall govern with respect to the filing fee and the costs of arbitration.

(d) The decision of the arbitrator may be appealed to the Superior Court of

the District of Columbia within 30 days of issuance of the decision. The Court shall vacate the arbitration award if:

- (1) The award was procured by corruption, fraud, or other undue means;
- (2) There was evident partiality by an arbitrator, corruption by an arbitrator, or misconduct prejudicing the rights of any party;
- (3) The arbitrator exceeded his or her authority;
- (4) The arbitrator refused to postpone the hearing upon sufficient cause being shown, refused to hear evidence material to the controversy, or otherwise conducted the hearing in a manner to prejudice substantially the rights of a party;
- (5) The award was not in accordance with applicable law, regulations, or rules; or
- (6) There was no agreement to arbitrate.

(Mar. 3, 1979, D.C. Law 2-139, § 606, as added May 15, 1990, D.C. Law 8-127, § 2(e), 37 DCR 2093; Apr. 12, 2000, D.C. Law 13-91, § 105, 47 DCR 520.)

Section references. — This section is referred to in § 1-606.11.

Prior Codifications. — 1981 Ed., § 1-606.7.

Effect of amendments. — D.C. Law 13-91, in subsec. (c), in the second sentence, substituted “§ 1-617.52(d)” for “§ 1-617.3(d)”.

Legislative history of Law 8-127. — For legislative history of D.C. Law 8-127, see Historical and Statutory Notes following § 1-606.06.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-602.03.

CASE NOTES

Due Process.

Although District of Columbia Comprehensive Merit Personnel Act (CMPA) provided exclusive avenue for aggrieved District employees to pursue work-related complaints, CMPA did not foreclose court from entertaining District employee's claim that District and District offi-

cials violated her due process rights by allegedly terminating her worker's compensation benefits. *Deschamps v. District of Columbia*, 582 F.Supp.2d 14, 2008 U.S. Dist. LEXIS 85539 (2008), dismissed by 2009 U.S. Dist. LEXIS 3788 (D.D.C. Jan. 21, 2009).

§ 1-606.08. Attorney fees.

(a) The Hearing Examiner or the Arbitrator may require payment by the agency of reasonable attorney fees if the appellant is the prevailing party and payment is warranted in the interest of justice.

(b) Expired.

(Mar. 3, 1979, D.C. Law 2-139, § 607, as added May 15, 1990, D.C. Law 8-127, § 2(e), 37 DCR 2093; June 28, 2002, D.C. Law 14-166, § 2, 49 DCR 4471.)

Section references. — This section is referred to in § 1-606.11.

Prior Codifications. — 1981 Ed., § 1-606.8.

Effect of amendments. — D.C. Law 14-166 designated subsec. (a) and added subsec. (b).

Legislative history of Law 8-127. — For legislative history of D.C. Law 8-127, see Historical and Statutory Notes following § 1-606.06.

Legislative history of Law 14-166. — Law 14-166, the “Office of Employee Appeals Attorney Fees Clarification Amendment Act of 2002”, was introduced in Council and assigned Bill No. 14-29, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on March 5, 2002, and April 9, 2002, respectively. Signed by the Mayor on April 30, 2002, it was assigned Act No. 14-355 and transmitted to both Houses

of Congress for its review. D.C. Law 14-166 became effective on June 28, 2002.

Editor's notes. — Pursuant to its own terms, subsection (b) expired one year after June 28, 2002.

Section 7034 of D.C. Law 17-219 repealed section 3 of D.C. Law 14-166.

CASE NOTES

ANALYSIS

Mootness.

Prevailing party.

Mootness.

Once appeal by former civilian employee of metropolitan police department to Office of Employee Appeals (OEA) of his intra-departmental reassignment was rendered moot because position to which former employee sought reinstatement no longer existed, mootness was not overcome by former employee's interest in being awarded attorney fees; because none of relief sought by former employee was available to him, he could not be "prevailing party" under attorney fees statute. *Settlemyre v. District of Columbia Office of Empl. Appeals*, 898 A.2d 902, 2006 D.C. App. LEXIS 212 (2006).

Once appeal by former civilian employee of metropolitan police department to Office of Employee Appeals (OEA) of his intra-departmental reassignment was rendered moot because posi-

tion to which former employee sought reinstatement no longer existed, mootness was not overcome by former employee's interest in being awarded attorney fees; because none of relief sought by former employee was available to him, he could not be "prevailing party" under attorney fees statute. *Settlemyre v. District of Columbia Office of Empl. Appeals*, 898 A.2d 902, 2006 D.C. App. LEXIS 212 (2006).

Prevailing party.

In context of awarding of attorney fees to prevailing party, term "prevailing party" is understood to mean party who has been awarded some relief by court. *Settlemyre v. District of Columbia Office of Empl. Appeals*, 898 A.2d 902, 2006 D.C. App. LEXIS 212 (2006).

In context of awarding of attorney fees to prevailing party, term "prevailing party" is understood to mean party who has been awarded some relief by court. *Settlemyre v. District of Columbia Office of Empl. Appeals*, 898 A.2d 902, 2006 D.C. App. LEXIS 212 (2006).

§ 1-606.09. Enforcement of order.

If the Office determines that the respondent has not complied with an order within 30 calendar days of service of the order, the Office shall certify the matter to the General Counsel and any agency that may be appropriate for enforcement.

(Mar. 3, 1979, D.C. Law 2-139, § 608, as added May 15, 1990, D.C. Law 8-127, § 2(e), 37 DCR 2093.)

Section references. — This section is referred to in §§ 1-606.01 and 1-606.11.

Prior Codifications. — 1981 Ed., § 1-606.9.

Legislative history of Law 8-127. — For legislative history of D.C. Law 8-127, see Historical and Statutory Notes following § 1-606.06.

§ 1-606.10. Public hearings.

(a) Hearings shall be open to the public. However, the Hearing Examiner may order a hearing or any part of a hearing closed if to do so would be in the best interest of the appellant, a witness, the public, or any other affected person. An order closing the hearing shall set forth the reasons for the Hearing Examiner's decision. Any objection to closing the hearing shall be made part of the record.

(b) A vote or decision on the appeal by the Office shall be made in public, pursuant to § 2-504.

(Mar. 3, 1979, D.C. Law 2-139, § 609, as added May 15, 1990, D.C. Law 8-127, § 2(e), 37 DCR 2093.)

Section references. — This section is referred to in § 1-606.11.

Prior Codifications. — 1981 Ed., § 1-606.10.

Legislative history of Law 8-127. — For legislative history of D.C. Law 8-127, see Historical and Statutory Notes following § 1-606.06.

CASE NOTES

Due Process.

Although District of Columbia Comprehensive Merit Personnel Act (CMPA) provided exclusive avenue for aggrieved District employees to pursue work-related complaints, CMPA did not foreclose court from entertaining District employee's claim that District and District offi-

cials violated her due process rights by allegedly terminating her worker's compensation benefits. *Deschamps v. District of Columbia*, 582 F.Supp.2d 14, 2008 U.S. Dist. LEXIS 85539 (2008), dismissed by 2009 U.S. Dist. LEXIS 3788 (D.D.C. Jan. 21, 2009).

§ 1-606.11. Rules.

Within 45 days of May 15, 1990, the Office shall, pursuant to § 1-606.02, issue proposed rules to implement the provisions of §§ 1-604.06, 1-606.01, 1-606.03(c), and 1-606.06 to 1-606.10. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day period, the proposed rules shall be deemed approved.

(Mar. 3, 1979, D.C. Law 2-139, § 610, as added May 15, 1990, D.C. Law 8-127, § 2(e), 37 DCR 2093.)

Cross references. — Merit system, educational service, rules and regulations, see § 1-608.01a.

Merit system, effective date provisions, see § 1-636.02.

Merit system, organization for personnel management, rules and regulations, see § 1-604.04.

Prior Codifications. — 1981 Ed., § 1-606.11.

Legislative history of Law 8-127. — For legislative history of D.C. Law 8-127, see Historical and Statutory Notes following § 1-606.06.

CASE NOTES

Due Process.

Although District of Columbia Comprehensive Merit Personnel Act (CMPA) provided exclusive avenue for aggrieved District employees to pursue work-related complaints, CMPA did not foreclose court from entertaining District employee's claim that District and District offi-

cials violated her due process rights by allegedly terminating her worker's compensation benefits. *Deschamps v. District of Columbia*, 582 F.Supp.2d 14, 2008 U.S. Dist. LEXIS 85539 (2008), dismissed by 2009 U.S. Dist. LEXIS 3788 (D.D.C. Jan. 21, 2009).

Subchapter VII. Equal Employment Opportunity.

§ 1-607.01. Affirmative action; exercise of religion.

(a) The Council reaffirms its intent that the objectives of the Affirmative

Action in District Government Employment Act, as amended (D.C. Code, § 1-521.01) be carried out.

(b) Each agency shall make reasonable accommodations for the free exercise of religion by its employees, and may adjust work schedules unless such adjustment would result in a substantial disruption of District business.

(c) If an employee's religious beliefs require the employee to take time off from work during certain periods of the workday or workweek, the employee may elect to make up the time off, rather than to charge the time off to leave, in accordance with the procedures established under subsections (d) and (e) of this section.

(d) An employee who makes an election pursuant to subsection (c) of this section shall, if the need to take time off is foreseeable, request an adjustment of his or her work schedule and obtain supervisory approval of the adjustment at least 10 days before taking time off from work. A request to adjust a work schedule may be disapproved if it is demonstrated that the adjustment would clearly interfere with the efficient conduct of the activities of the entity of the District government for which the employee works.

(e) Notice of an employee's opportunity to obtain a religious accommodation shall be provided to the employee at the time the employee accepts appointment with the District government.

(f) Nothing in this section shall be construed to limit the use of other forms of leave authorized by the District government or to require a supervisor to allow an employee the opportunity to work more than 40 hours in a given week to make up for the time taken off for the religious accommodation.

(Mar. 3, 1979, D.C. Law 2-139, § 701, 25 DCR 5740; Mar. 2, 1991, D.C. Law 8-193, § 2, 37 DCR 6728.)

Prior Codifications. — 1981 Ed., § 1-607.1.
1973 Ed., § 1-337.1.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 8-193. — Law 8-193 was introduced in Council and assigned

Bill No. 8-384, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on September 25, 1990, and October 9, 1990, respectively. Signed by the Mayor on October 17, 1990, it was assigned Act No. 8-256 and transmitted to both Houses of Congress for its review.

CASE NOTES

Due Process.

Although District of Columbia Comprehensive Merit Personnel Act (CMPA) provided exclusive avenue for aggrieved District employees to pursue work-related complaints, CMPA did not foreclose court from entertaining District employee's claim that District and District offi-

cials violated her due process rights by allegedly terminating her worker's compensation benefits. *Deschamps v. District of Columbia*, 582 F.Supp.2d 14, 2008 U.S. Dist. LEXIS 85539 (2008), dismissed by 2009 U.S. Dist. LEXIS 3788 (D.D.C. Jan. 21, 2009).

§ 1-607.02. Special provisions for persons with physical or developmental disabilities.

The Mayor may develop rules and regulations which authorize the inquiry

into bona fide job-related qualifications which may affect persons with physical or developmental disabilities, prior to appointing such individuals under the authority of § 1-609.04(2). Persons with physical or developmental disabilities who apply for positions under the authority of subchapters VIII and VIII-A of this chapter may be examined to assure that their level of skills is sufficient to meet minimal job qualifications.

(Mar. 3, 1979, D.C. Law 2-139, § 702, 25 DCR 5740; Apr. 24, 2007, D.C. Law 16-305, § 3(b)(2)-(4), 53 DCR 6198.)

Prior Codifications. — 1981 Ed., § 1-607.2.

1973 Ed., § 1-337.2.

Effect of amendments. — D.C. Law 16-305 substituted “persons with physical or developmental disabilities” for “persons with physical handicaps of developmental disabilities” and “Persons with physical or developmental dis-

abilities” for “Physically handicapped or developmentally disabled person”.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 1-307.02.

CASE NOTES

Due Process.

Although District of Columbia Comprehensive Merit Personnel Act (CMPA) provided exclusive avenue for aggrieved District employees to pursue work-related complaints, CMPA did not foreclose court from entertaining District employee's claim that District and District offi-

cials violated her due process rights by allegedly terminating her worker's compensation benefits. *Deschamps v. District of Columbia*, 582 F.Supp.2d 14, 2008 U.S. Dist. LEXIS 85539 (2008), dismissed by 2009 U.S. Dist. LEXIS 3788 (D.D.C. Jan. 21, 2009).

§ 1-607.03. Veterans preference in employment.

(a) For appointment under the provisions of subchapters VIII and VIII-A of this chapter, persons who have served on active duty in the armed forces of the United States for more than 180 consecutive days, not including service under honorable conditions as provided under § 511(d) of Title 10 of the United States Code [transferred; see now 10 U.S.C. § 12103] and have separated from the armed forces under honorable conditions may receive an additional 5 points on any register established under the authority of subchapters VIII and VIII-A of this chapter.

(b) A person entitled to preference points, as provided in subsection (a) of this section, shall receive an additional 5 points if he or she has separated from the armed forces under honorable conditions, and has established the presence at the time of appointment of a service-connected disability or is receiving compensation, disability retirement benefits, or pensions because of a public law administered by the Veterans Administration or a military department.

(c) Any employee of the District government who, on January 1, 1979, was entitled to veterans preference under federal law, shall continue to be entitled to such veterans preference under this chapter.

(d) The Mayor is authorized to develop procedures for the consideration of granting veterans preference, as provided in this section, to persons who served in the armed forces but were less than honorably discharged. Such persons may be entitled to the preference afforded by this section at the time

of initial appointment if they show, to the satisfaction of the Mayor, that they have been discriminated against in violation of those rights guaranteed in § 1-601.01(2) and this subchapter. No appeal shall be available to any person not afforded a veterans preference under the provisions of this subsection.

(e) Except for the appointment preferences provided in subsections (h), (i), (j), and (k) of this section, no person shall receive any appointment preference after 5 years from the date of separation from the armed forces of the United States.

(f) No person entering the armed forces of the United States after October 14, 1976, shall receive any preference unless the person served in the armed forces of the United States during time of war.

(g) No person retiring from the armed forces of the United States shall receive any preference.

(h) The surviving spouse or surviving domestic partner who has not subsequently married or entered into a domestic partnership of a veteran shall be accorded the same preference in appointment as would be accorded to her or him in the federal service pursuant to 5 U.S.C. §§ 2108(3)(D) and 3309(1).

(i) The spouse or domestic partner of a service-connected veteran with a disability shall be accorded the same preference in appointment as would be accorded to her or him in the federal service pursuant to 5 U.S.C. §§ 2108(3)(E) and 3309(1).

(j) A person classified as 30 percent or more disabled under subsection (b) of this section shall receive an appointment preference as provided in that subsection.

(k) A person who served during the Vietnam conflict, who has a discharge of other than dishonorable, shall receive an appointment preference for a period not to exceed 10 years from May 19, 1982.

(Mar. 3, 1979, D.C. Law 2-139, § 703, 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(f), 27 DCR 2632; May 19, 1982, D.C. Law 4-107, §§ 2, 3, 29 DCR 1410; Apr. 24, 2007, D.C. Law 16-305, § 3(c), 53 DCR 6198; Sept. 12, 2008, D.C. Law 17-231, § 3(b), 55 DCR 6758.)

Prior Codifications. — 1981 Ed., § 1-607.3.

1973 Ed., § 1-337.3.

Effect of amendments. — D.C. Law 16-305, in subsec. (i), substituted “veteran with a disability” for “disabled veteran”.

D.C. Law 17-231, in subsec. (h), substituted “surviving spouse or surviving domestic partner who has not subsequently married or entered into a domestic partnership” for “unmarried widow or widower”; and, in subsec. (i), substituted “spouse or domestic partner” for “wife or husband”.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 3-81. — For legislative history of D.C. Law 3-81, see Historical and Statutory Notes following § 1-602.02.

Legislative history of Law 4-107. — Law 4-107 was introduced in Council and assigned Bill No. 4-294, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on January 26, 1982 and March 9, 1982, respectively. Signed by the Mayor on March 26, 1982, it was assigned Act No. 4-168 and transmitted to both Houses of Congress for its review.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 1-307.02.

Legislative history of Law 17-231. — For Law 17-231, see notes following § 1-301.45.

References in text. — “Section 511(d) of Title 10 of the United States Code,” referred to in (a), was recodified as sections 3571 and 8571 of Title 10. These sections were subsequently repealed, and present similar provisions may be found at 10 U.S.C. § 741.

CASE NOTES

Due Process.

Although District of Columbia Comprehensive Merit Personnel Act (CMPA) provided exclusive avenue for aggrieved District employees to pursue work-related complaints, CMPA did not foreclose court from entertaining District employee's claim that District and District offi-

cials violated her due process rights by allegedly terminating her worker's compensation benefits. *Deschamps v. District of Columbia*, 582 F.Supp.2d 14, 2008 U.S. Dist. LEXIS 85539 (2008), dismissed by 2009 U.S. Dist. LEXIS 3788 (D.D.C. Jan. 21, 2009).

§ 1-607.04. Employee selection procedures — Statement of purpose.

The Council believes that properly validated and standardized employee selection procedures can significantly contribute to the implementation of nondiscriminatory personnel policies, as required by this subchapter. It is also recognized that professionally developed tests, when used in conjunction with other tools of personnel assessment and complemented by sound programs of job design, may aid significantly in the development and maintenance of an efficient work force and in the utilization and conservation of human resources.

(Mar. 3, 1979, D.C. Law 2-139, § 704, 25 DCR 5740.)

Prior Codifications. — 1981 Ed., § 1-607.4.

1973 Ed., § 1-337.4.

Legislative history of Law 2-139. — For

legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

CASE NOTES

Due Process.

Although District of Columbia Comprehensive Merit Personnel Act (CMPA) provided exclusive avenue for aggrieved District employees to pursue work-related complaints, CMPA did not foreclose court from entertaining District employee's claim that District and District offi-

cials violated her due process rights by allegedly terminating her worker's compensation benefits. *Deschamps v. District of Columbia*, 582 F.Supp.2d 14, 2008 U.S. Dist. LEXIS 85539 (2008), dismissed by 2009 U.S. Dist. LEXIS 3788 (D.D.C. Jan. 21, 2009).

§ 1-607.05. Employee selection procedures — Relation to job required.

The selection procedures utilized shall be job related to minimize or eliminate discrimination.

(Mar. 3, 1979, D.C. Law 2-139, § 705, 25 DCR 5740.)

Section references. — This section is referred to in § 1-607.06.

Prior Codifications. — 1981 Ed., § 1-607.5.

1973 Ed., § 1-337.5.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

CASE NOTES

Due Process.

Although District of Columbia Comprehensive Merit Personnel Act (CMPA) provided exclusive avenue for aggrieved District employees

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benefits. *Deschamps v. District of Columbia*, 582 F.Supp.2d 14, 2008 U.S. Dist. LEXIS 85539 (2008), dismissed by 2009 U.S. Dist. LEXIS 3788 (D.D.C. Jan. 21, 2009).

§ 1-607.06. Employee selection procedures — Evidence of validity.

(a) Each person utilizing a selection procedure in choosing among candidates for a position shall have available for inspection evidence that the procedure does not violate § 1-607.05. Such evidence shall be examined for indications of possible discrimination, such as instances of higher rejection rates for minority candidates than nonminority candidates.

(b) Evidence of selection procedure validity should consist of evidence demonstrating that the procedure is predictive of or significantly correlated with important elements of work behavior which comprise or are relevant to the job or jobs for which candidates are being evaluated.

(Mar. 3, 1979, D.C. Law 2-139, § 706, 25 DCR 5740.)

Prior Codifications. — 1981 Ed., § 1-607.6.
1973 Ed., § 1-337.6.

Legislative history of Law 2-139. — For

legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

CASE NOTES

Due Process.

Although District of Columbia Comprehensive Merit Personnel Act (CMPA) provided exclusive avenue for aggrieved District employees to pursue work-related complaints, CMPA did not foreclose court from entertaining District employee's claim that District and District offi-

cials violated her due process rights by allegedly terminating her worker's compensation benefits. *Deschamps v. District of Columbia*, 582 F.Supp.2d 14, 2008 U.S. Dist. LEXIS 85539 (2008), dismissed by 2009 U.S. Dist. LEXIS 3788 (D.D.C. Jan. 21, 2009).

§ 1-607.07. Sex discrimination in benefit programs.

No benefit program shall be denied to any District employee on account of sex.

(Mar. 3, 1979, D.C. Law 2-139, § 707, 25 DCR 5740.)

Prior Codifications. — 1981 Ed., § 1-607.7.
1973 Ed., § 1-337.7.

Legislative history of Law 2-139. — For

legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

§ 1-607.08. Specific standards authorized.

Specific standards to carry out the purposes of this subchapter shall be adopted by the Mayor.

(Mar. 3, 1979, D.C. Law 2-139, § 708, 25 DCR 5740.)

Prior Codifications. — 1981 Ed., § 1-607.8.

1973 Ed., § 1-337.8.

Legislative history of Law 2-139. — For

legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

CASE NOTES

Due Process.

Although District of Columbia Comprehensive Merit Personnel Act (CMPA) provided exclusive avenue for aggrieved District employees to pursue work-related complaints, CMPA did not foreclose court from entertaining District employee's claim that District and District offi-

cials violated her due process rights by allegedly terminating her worker's compensation benefits. *Deschamps v. District of Columbia*, 582 F.Supp.2d 14, 2008 U.S. Dist. LEXIS 85539 (2008), dismissed by 2009 U.S. Dist. LEXIS 3788 (D.D.C. Jan. 21, 2009).

Subchapter VII-A. Residency Requirement.

§ 1-607.51. Residency requirement. [Repealed].

Repealed.

(Mar. 3, 1979, D.C. Law 2-139, § 751, as added July 24, 1998, D.C. Law 12-138, § 2(c), 45 DCR 2972; Oct. 21, 1998, Pub. L. 105-277, § 153, 112 Stat. 2681-146.)

Cross references. — Employee deferred compensation program, office of employee appeals, review, see § 47-3601.

Equal opportunity employment, veterans' preference, see § 1-607.03.

Health and hospitals public benefit corporation, personnel administration, see § 44-1102.08.

Merit system, coverage, agreements to provide coverage, see § 1-602.01.

Merit system, educational employees, coverage, see § 1-602.03.

Merit system, educational service, rules and regulations, see § 1-608.01a.

Merit system, effective date provisions, see § 1-636.02.

Merit system, equal employment opportunity, physically handicapped and developmentally disabled persons, see § 1-607.02.

Merit system, excepted service, transitional appointments or reassignments of nontemporary appointments, see § 1-609.07.

Merit system, personnel system, transition, rights and benefits, see § 1-602.04.

Organization for personnel management, rules and regulations, see § 1-604.04.

Public employee relations board, transfer of property, personnel and cases, see § 1-605.03.

Public libraries, board of trustees, powers and duties, see § 39-105.

Public service commission, office of general counsel, powers and duties, see § 34-803.

Washington convention center authority, merit personnel system inapplicable, see § 10-1202.16.

Prior Codifications. — 1981 Ed., § 1-607.51.

Editor's notes. — Section 2(c) of D.C. Law 12-138 had added this section, effective July 24, 1998; this section was subsequently repealed by Pub. L. 105-277, § 153, effective Oct. 21, 1998.

Subchapter VIII. Career Service.

§ 1-608.01. Creation of Career Service.

(a) The Mayor shall issue rules and regulations governing employment, advancement, and retention in the Career Service which shall include all persons appointed to positions in the District government, except persons appointed to positions in the Excepted, Executive, Educational, Management Supervisory, or Legal Service. The Career Service shall also include, after

January 1, 1980, all persons who are transferred into the Career Service pursuant to the provisions of subsection (c) of § 1-602.04. The rules and regulations governing Career Service employees shall be indexed and cross referenced to the incumbent classification system and shall provide for the following:

(1) A positive recruitment program designed to meet current and projected personnel needs;

(2) Open competition for initial appointment to the Career Service;

(3) Examining procedures designed to achieve maximum objectivity, reliability, and validity through a practical assessment of attributes necessary to successful job performance and career development as provided in subchapter VII of this chapter;

(4) Appointments to be made on the basis of merit by selection from the highest qualified available eligibles based on specific job requirements, from appropriate lists established on the basis of the provisions of paragraphs (1), (2), and (3) of this subsection with appropriate regard for affirmative action goals and veterans preference as provided in subchapter VII of this chapter;

(5) Appointments made without time limitation in accordance with paragraph (4) of this subsection, as permanent Career Service status appointments upon satisfactory completion of a probationary period of at least 1 year;

(6) Temporary, term, and other time-limited appointments, in appropriate cases, which do not confer permanent status but are to be made, insofar as practicable, in accordance with paragraph (4) of this subsection, except that such appointments to positions at the DS-12 level or equivalent or below may be made non-competitively;

(7) Appointments to continuing positions (in the absence of lists of eligibles), which do not confer permanent status, subject to meeting minimum qualification standards and subject to termination as soon as lists of qualified eligibles for permanent appointment can be established in accordance with paragraph (4) of this subsection;

(8) Emergency appointments for not more than 30 days to provide for maintenance of essential services in situations of natural disaster or catastrophes where normal employment procedures are impracticable;

(9) Promotions of permanent employees, giving due consideration to demonstrated ability, quality, and length of service;

(10) Reinstatements, reassignments, and transfers of employees with permanent status;

(11) Establishment of programs, including trainee programs, designed to attract and utilize persons with minimal qualifications, but with potential for development, in order to provide career development opportunities for members of disadvantaged groups, persons with disabilities, women, and other appropriate target groups. These programs may provide for permanent appointments to trainee or similar positions through competition limited to these persons;

(12) Reduction-in-force procedures, with:

(A) A prescribed order of separation based on tenure of appointment, length of service, including creditable federal and military service, District residency, veterans preference, and officially documented work performance;

- (B) Priority reemployment consideration for employees separated;
- (C) Consideration of job sharing and reduced hours; and
- (D) Employee appeal rights; and

(13) Separations for cause, which shall be subject to the adverse action and appeal procedures provided for in subchapter XVI-A of this chapter.

(b) Selections to the Career Service shall be made in accordance with equal employment opportunity principles as set forth in subchapter VII of this chapter.

(c) Repealed.

(d) The Mayor may issue separate rules and regulations concerning the personnel system affecting members of the uniform services of the Police and Fire Departments which may provide for a probationary period of at least 1 year. Other such separate rules and regulations may only be issued to carry out provisions of this chapter which accord such member of the uniform services of the Police and Fire Departments separate treatment under this chapter. Such separate rules and regulations are not a bar to collective bargaining during the negotiation process between the Mayor and the recognized labor organizations for the Metropolitan Police and Fire Departments, but shall be within the parameters of § 1-617.08.

(d-1) For members of the Metropolitan Police Department and notwithstanding § 1-632.03(1)(B) or any other law or regulation, the Assistant and Deputy Chiefs of Police and inspectors shall be selected from among the captains of the force and shall be returned to the rank of captain when the Mayor so determines.

(d-2)(1) The Chief of Police shall recommend to the Director of Personnel criteria for Career Service promotions and Excepted Service appointments to the positions of Inspector, Commander, and Assistant Chief of Police that address the areas of education, experience, physical fitness, and psychological fitness. The recommended criteria shall be the same for Career Service promotions and Excepted Service appointments to these positions. When establishing the criteria, the Chief of Police shall review national standards, such as the Commission on Accreditation for Law Enforcement Agencies.

(2) All candidates for the positions of Inspector, Commander, and Assistant Chief of Police shall be of good standing with no disciplinary action pending or administered resulting in more than a 14-day suspension or termination within the past 3 years.

(d-3)(1) The Fire Chief shall recommend to the Mayor criteria for Career Service promotions and Excepted Service appointments to the positions of Battalion Fire Chief and Deputy Fire Chief that address the areas of education, experience, physical fitness, and psychological fitness. The recommended criteria shall be the same for Career Service promotions and Excepted Service appointments to these positions. When establishing the criteria, the Fire Chief shall review national standards, such as the National Fire Protection Association's Standard on Fire Officer Professional Qualifications.

(2) All candidates for the positions of Battalion Fire Chief and Deputy Fire Chief shall be of good standing with no disciplinary action pending or administered resulting in more than a 14-day suspension or termination within the past 3 years.

(e)(1) Notwithstanding any provision of Unit A of Chapter 14 of Title 2, an applicant for District government employment in the Career Service who is a bona fide resident of the District at the time of application shall be given a 10-point hiring preference over a nonresident applicant unless the applicant declines the preference. This preference shall be in addition to, and not instead of, qualifications established for the position

(2) An applicant claiming a hiring preference shall submit 8 proofs of bona fide residency in a manner determined by the Mayor. If hired, the employee shall agree in writing to maintain bona fide District residency for a period of 7 consecutive years from the effective date of hire and shall provide proof of bona fide residency annually to the director of personnel for the agency or instrumentality for the first 7 years of employment. Failure to maintain District residency for the consecutive 7-year period shall result in forfeiture of employment.

(3) Any individual hired under a previous residency law who was subject to a residency requirement shall be treated as if the individual claimed a preference and was hired pursuant to the Residency Preference Amendment Act of 1988 [D.C. Law 7-203].

(4) In reductions-in-force, a resident District employee shall be preferred for retention and reinstatement of employment over a non-resident District employee. For purposes of this paragraph only, a non-resident District employee hired prior to January 1, 1980, shall be considered a District resident. When the provisions of this paragraph conflict with an effective collective bargaining agreement, the terms of the collective bargaining agreement shall govern.

(5) A District employee hired in the Career Service prior to March 16, 1989, who elects to apply for a competitive promotion in the Career Service and to claim a preference, shall be bound by the provisions of paragraph (2) of this subsection.

(6) The Mayor shall, pursuant to subchapter I of Chapter 5 of Title 2, issue proposed rules to implement the preference system established by this subsection. The proposed rules shall be submitted to the Council no later than February 1, 1989, for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(7)(A) Except as provided in subparagraph (B), the Mayor may not require an individual to reside in the District of Columbia as a condition of employment in the Career Service.

(B) The Mayor shall provide notice to each employee in the Career Service of the provisions of this subsection that require an employee claiming a residency preference to maintain District residency for 7 consecutive years, and shall only apply such provisions with respect to employees claiming a residency preference on or after March 16, 1989.

(e-1)(1) Notwithstanding any provision of Chapter 14 of Title 2 [§ 2-1401.01 et seq.], an applicant for District government employment in the Career Service shall be given a 10-point hiring preference if, at the time of application, the applicant:

(A) Is within 5 years of leaving foster care under the Child and Family Services Agency and is a resident of the District; or

(B)(i) Is currently in the foster care program administered by the Child and Family Services Agency; and

(ii) Is at least 18 years old and not more than 21 years old, regardless of residency.

(2) An applicant claiming a hiring preference pursuant to this subsection shall submit proof of eligibility for the preference by submitting to the hiring authority a letter or other document issued by the Child and Family Services Agency or the Family Court of the Superior Court of the District of Columbia showing that the applicant is or was in foster care or showing the date the applicant left court supervision.

(3) An applicant who receives a hiring preference pursuant to this subsection and who is a resident of the District shall remain eligible to receive any other preference available under this chapter in addition to the preference received pursuant to this subsection.

(4) For the purposes of this subsection, the term “foster care” shall have the same meaning as provided in § 4-342(2).

(5) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], shall issue rules to implement the provisions of this subsection. The proposed rules shall be submitted to the Council for a 30-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules by resolution within the 30-day review period, the proposed rules shall be deemed approved.

(f) Repealed.

(g) Each subordinate agency head shall submit to the Mayor and the Council quarterly reports detailing the names of all new employees and their pay schedules, titles, and place of residence. The report shall explain the reasons for employment of non-District residents. The Mayor shall integrate into each subordinate agency’s yearly performance objectives the rate of success in hiring District residents. The Mayor shall conduct annual audits of each subordinate agency’s personnel records to ensure that all persons claiming a residency preference at time of hiring complies with the provisions of subsection (e)(2) of this section. Audit reports shall be submitted annually to the Council.

(Mar. 3, 1979, D.C. Law 2-139, § 801, 25 DCR 5740; Aug. 1, 1979, D.C. Law 3-14, § 2(a), 25 DCR 10565; Aug. 7, 1980, D.C. Law 3-81, § 2(g), 27 DCR 2632; May 22, 1981, D.C. Law 4-2, § 2(a)-(c), 28 DCR 2586; Apr. 3, 1982, D.C. Law 4-92, § 2(a)-(c), 29 DCR 745; Aug. 1, 1985, D.C. Law 6-15, § 7(a), 32 DCR 3570; Mar. 16, 1989, D.C. Law 7-203, § 2(a), 36 DCR 450; Nov. 21, 1989, 103 Stat. 1277, Pub. L. 101-168, § 110B(b)(1); June 10, 1998, D.C. Law 12-124, § 101(e), 45 DCR 2464; July 24, 1998, D.C. Law 12-138, § 2(a), 45 DCR 2972; Oct. 21, 1998, 112 Stat. 2681-146, Pub. L. 105-277, § 153; Apr. 20, 1998, D.C. Law 12-260, § 2(c), 46 DCR 1318; Apr. 12, 2000, D.C. Law 13-91, § 103(h), 47 DCR 520; Oct. 19, 2000, D.C. Law 13-172, § 822(a), 47 DCR 6308; Sept. 30, 2004, D.C. Law 15-194, § 104(a), 51 DCR 9406; Apr. 24, 2007, D.C. Law 16-305,

§ 3(d), 53 DCR 6198; Feb. 6, 2008, D.C. Law 17-108, § 203(d), 54 DCR 10993; Sept. 12, 2008, D.C. Law 17-231, § 3(c), 55 DCR 6758; Mar. 25, 2009, D.C. Law 17-353, § 223(c)(2), 56 DCR 1117; Mar. 14, 2012, D.C. Law 19-115, § 2(a), 59 DCR 461; July 13, 2012, D.C. Law 19-162, § 3, 59 DCR 5713.)

Cross references. — Traffic adjudication, hearing examiners powers and duties, see § 50-2301.04.

D.C. retirement board, see § 1-711.

Mayor and Council members, coverage, see § 1-602.02.

Merit system, effective date provisions, see § 1-636.02.

Procurement, employees subject to ethical conduct requirements, see § 2-310.01.

Section references. — This section is referred to in §§ 1-602.01, 1-602.02, 1-602.04, 1-608.59, 1-609.06, and 1-609.57.

Prior Codifications. — 1981 Ed., § 1-608.1.

1973 Ed., § 1-338.1.

Effect of amendments. — D.C. Law 13-91, in par. (13) of subsec. (a), substituted “subchapter XVII-A” for “subchapter XVII”.

D.C. Law 13-172 inserted subsec. (d-1).

D.C. Law 15-194 added subsecs. (d-2) and (d-3).

D.C. Law 16-305, in subsec. (a)(11), substituted “persons with disabilities” for “handicapped persons”.

D.C. Law 17-108, rewrote subsecs. (e)(1) and (2); in subsec. (e)(7)(B), substituted “7 consecutive years” for “5 consecutive years”; and added subsec. (g).

D.C. Law 17-231, in subsec. (c)(1), substituted “spouse, domestic partner” for “husband, wife”.

D.C. Law 17-353 validated a previously made technical correction in subsec. (e).

D.C. Law 19-115 repealed subsec. (c).

D.C. Law 19-162 added subsec. (e-1).

Temporary Amendment of Section. — For temporary (225 day) additions, see § 2 of Lateral Appointment of Law Enforcement Officers Temporary Amendment Act of 1999 (D.C. Law 13-61, October 12, 1999, law notification 47 DCR 1983).

For temporary (225 day) additions, see § 2 of Lateral Appointment of Law Enforcement Officers Clarifying Temporary Amendment Act of 1999 (D.C. Law 13-102, January 10, 2000, law notification 47 DCR 4339).

Section 2 of D.C. Law 18-30 added a new subsec. (a)(6A) to read as follows:

“(6A) The position of a term employee in the Department of Parks and Recreation, paid by local appropriated funds and performing permanent services, that is renewed for more than 4 consecutive term appointments shall be converted to a career service employee position,

subject to all laws regulating employee competition.”

Section 4(b) of D.C. Law 18-30 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 2(c) of the Legal Service Establishment Emergency Amendment Act of 1998 (D.C. Act 12-620, January 22, 1999, 46 DCR 1343).

For temporary (90-day) designation of section as Part A, Career Service Created, and temporary addition of a Part B, Lateral Police Career Appointments, consisting of §§ 1-608.11 to 1-608.15, see § 2(b) of the Lateral Appointment of Law Enforcement Officers Emergency Amendment Act of 1999 (D.C. Act 13-137, August 4, 1999, 46 DCR 6802).

For temporary (90-day) designation of section as Part A, Career Service Created, and temporary addition of a Part B, Lateral Police Career Appointments, consisting of §§ 1-608.11 to 1-608.15, see § 2(b) of the Lateral Appointment of Law Enforcement Officers Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-175, November 2, 1999, 46 DCR 9236).

For temporary (90-day) designation of section as Part A, Career Service Created, and temporary addition of a Part B, Lateral Police Career Appointments, consisting of §§ 1-608.11 to 1-608.15, see § 2(b) of the Lateral Appointment of Law Enforcement Officers Clarifying Emergency Amendment Act of 1999 (D.C. Act 13-231, January 11, 2000, 47 DCR 506).

For temporary (90-day) designation of section as Part A, Career Service Created, and temporary addition of a Part B, Lateral Police Career Appointments, consisting of §§ 1-608.11 to 1-608.15, see § 2(b) of the Lateral Appointment of Law Enforcement Officers Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-305, April 7, 2000, 47 DCR 2701).

For temporary (90-day) amendment of section, see § 822(a) of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see § 822(a) of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

For temporary (90 day) amendment of section, see § 2 of Department of Parks and Recreation Term Employee Appointment Emergency Amendment Act of 2009 (D.C. Act 18-50, April 27, 2009, 56 DCR 3584).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 3-14. — Law 3-14 was introduced in Council and assigned Bill No. 3-114, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on May 8, 1979 and May 22, 1979, respectively. Signed by the Mayor on June 8, 1979, it was assigned Act No. 3-51 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-81. — For legislative history of D.C. Law 3-81, see Historical and Statutory Notes following § 1-602.02.

Legislative history of Law 4-2. — Law 4-2 was introduced in Council and assigned Bill No. 4-85, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on February 24, 1981 and March 10, 1981, respectively. Signed by the Mayor on March 20, 1981, it was assigned Act No. 4-12 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-92. — Law 4-92 was introduced in Council and assigned Bill No. 4-373, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on January 12, 1982 and January 26, 1982, respectively. Signed by the Mayor on February 9, 1982, it was assigned Act No. 4-150 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-15. — Law 6-15 was introduced in Council and assigned Bill No. 6-141, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 14, 1985 and May 28, 1985, respectively. Signed by the Mayor on June 7, 1985, it was assigned Act No. 6-30 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-203. — Law 7-203 was introduced in Council and assigned Bill No. 7-44, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-274 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Legislative history of Law 12-138. — Law 12-138, the "Residency Requirement Reinstatement Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-137, which was referred to the Committee on Government

Operations. The Bill was adopted on first and second readings on March 17, 1998, and April 7, 1998, respectively. Signed by the Mayor on April 22, 1998, it was assigned Act No. 12-340 and transmitted to both Houses of Congress for its review. D.C. Law 12-138 became effective on July 24, 1998.

Legislative history of Law 12-260. — For legislative history of D.C. Law 12-260, see Historical and Statutory Notes following § 1-604.04.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-602.03.

Legislative history of Law 13-172. — For Law 13-172, see notes following § 1-603.01.

Legislative history of Law 15-194. — For Law 15-194, see notes following § 1-604.02.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 1-307.02.

Legislative history of Law 17-108. — For Law 17-108, see notes following § 1-209.05.

Legislative history of Law 17-231. — For Law 17-231, see notes following § 1-301.45.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 1-129.05.

Legislative history of Law 19-115. — Law 19-115, the "District of Columbia Government Comprehensive Merit Personnel Amendment Act of 2012", was introduced in Council and assigned Bill No. 19-476, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 6, 2011, and January 4, 2012, respectively. Signed by the Mayor on January 20, 2012, it was assigned Act No. 19-290 and transmitted to both Houses of Congress for its review. D.C. Law 19-115 became effective on March 14, 2012.

Legislative history of Law 19-162. — Law 19-162, the "Foster Care Youth Employment Amendment Act of 2012", was introduced in Council and assigned Bill No. 19-691, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on April 17, 2012, and May 1, 2012, respectively. Signed by the Mayor on May 16, 2012, it was assigned Act No. 19-372 and transmitted to both Houses of Congress for its review. D.C. Law 19-162 became effective on July 13, 2012.

Repeal of Law 12-138. — Section 153 of Pub. L. 105-277, 112 Stat. 2681-146, repealed D.C. Law 12-138, which had added a subsection (f) to this section.

References in text. — The "Residency Preference Amendment Act of 1988", referred to in subsection (e)(3), is D.C. Law 7-203.

Editor's notes. — Application of Titles I and VI of D.C. Law 15-194: Section 1301 of D.C. Law 15-194 provided: "Titles I and VI of this act shall apply to pre-1980 employees of the Metropolitan Police Department and the Fire and

Emergency Medical Services Department upon their enactment by Congress.”

CASE NOTES

ANALYSIS

At-will employee.
Construction with federal law.
Discrimination.
Due process.
Exhaustion of administrative remedies.
In general.

At-will employee.

District of Columbia employee who held an at-will appointment had no property interest in his continued employment, and thus was not entitled to a hearing prior to his termination, as there was no objective basis for believing that he would continue to be employed indefinitely, and employee was not protected under District of Columbia law protecting career service employees. *Ekwem v. Fenty*, 666 F.Supp.2d 71, 2009 U.S. Dist. LEXIS 100670 (2009).

Construction with federal law.

A Career Service employee may attempt to vindicate a deprivation of the property interest protected by the Due Process Clause arising from the District of Columbia's Comprehensive Merit Personnel Act (CMPA) by way of a §§ 1983 claim. *Hoey v. District of Columbia*, 540 F.Supp.2d 218, 2008 U.S. Dist. LEXIS 26328 (2008).

Provision in Metropolitan Police Personnel Amendment Act, stating that, for members of metropolitan police department, and notwithstanding any other law or regulation, assistant and deputy chiefs of police and inspectors shall be returned to rank of captain when mayor so determines, overrode conflicting provision in Comprehensive Merit Personnel Act (CMPA), and provided mayor or his delegee with explicit discretionary authority to return commanders to rank of captain; plain language in act indicated it applied to certain high ranking career service employees of police department, and it would have been illogical to provide mayor or his delegee with authority to return assistant chiefs and inspectors, the ranks immediately above and below commanders, to rank of captain, but not to grant same authority with respect to commanders. *Burton v. Office of Empl. Appeals*, 30 A.3d 789, 2011 D.C. App. LEXIS 616 (2011).

Discrimination.

District of Columbia Office of the Chief Financial Officer (OCFO) whose position as Support Services Specialist (SSS) was abolished failed to establish prima facie case of discrimination in connection with his nonselection for

Special Assistant to the Director (SAD) and Lead Logistics Management Specialist (LLMS) positions in newly formed Office of Management and Administration (OMA), where he conceded his failure to apply for either position; even assuming that Career Service employee was entitled to automatic consideration for positions pursuant to reduction in force (RIF) procedures of D.C. government, there was no evidence he was a Career Service employee. *Thomas v. Gandhi*, 525 F.Supp.2d 103, 2007 U.S. Dist. LEXIS 87858 (2007), affirmed by 377 Fed. Appx. 25, 2010 U.S. App. LEXIS 10674 (D.C. Cir. 2010).

Due process.

Commander in metropolitan police department did not have property interest protected by due process in his position as commander that would have been violated by his demotion without cause to rank of captain; Metropolitan Police Personnel Amendment gave chief of police discretionary authority to return any commander to rank of captain or inspector. *Burton v. Office of Empl. Appeals*, 30 A.3d 789, 2011 D.C. App. LEXIS 616 (2011).

Exhaustion of administrative remedies.

High ranking police officer who was demoted from rank of commander to captain was required to exhaust administrative remedies provided by District of Columbia's Comprehensive Merit Personnel Act (CMPA) prior to bringing defamation plus and emotional distress claims against police chief and District of Columbia officials, since these claims were based on statements made by police chief and District officials concerning the supposed reasons for his demotion, and thus they concerned an adverse action taken against the officer. *Hoey v. District of Columbia*, 540 F.Supp.2d 218, 2008 U.S. Dist. LEXIS 26328 (2008).

High ranking police officer who was demoted from rank of commander to captain was required to exhaust administrative remedies provided by District of Columbia's Comprehensive Merit Personnel Act (CMPA) prior to bringing §§ 1983 action against District of Columbia and police chief, alleging that he was deprived of his Fifth Amendment property interest in his employment at the rank of commander without due process of law; although officer had appealed demotion to Office of Employee Appeals (OEA) and had prevailed before OEA hearing officer, there was no final decision on police department's appeal from hearing officer's decision. *Hoey v. District of Columbia*, 540

F.Supp.2d 218, 2008 U.S. Dist. LEXIS 26328 (2008).

In general.

For purposes of determining whether he had due process property interest in his Commander position, District of Columbia Metropolitan Police Department (MPD) officer's status did not change from Career Service employee to "at-will" employee when he was promoted directly to that position from Captain. *Fonville v. District of Columbia*, 448 F.Supp.2d 21, 2006 U.S. Dist. LEXIS 58564 (2006).

Deputy procurement officer for university was in the Educational Service, as opposed to the Career Service, for purposes of District of Columbia Comprehensive Merit Personnel Act (CMPA); fact that procurement officer may have supervised a relatively small number of clerical employees in course of his job duties did not mean that he fell within Career Service as a matter of law. D.C. Code 1981, §§ 1-603.1(6)(F), 1-608.1(a). *Hoage v. Board of Trustees of the Univ. of the District of Columbia*, 714 A.2d 776, 1998 D.C. App. LEXIS 120 (1998).

Existence of either one or two personnel forms indicating that deputy procurement officer for university was career employee did not affect university's determination that officer was member of the Educational Service, as opposed to Career Service, for purposes of District of Columbia Comprehensive Merit Personnel Act (CMPA), and thus, absence of second form from record was ultimately irrelevant; presence of computer printed "1" in box on form, thereby indicating that officer was in the Career Service, was typographical error. D.C. Code 1981, §§ 1-603.1(6), 1-608.1(a). *Hoage v. Board of Trustees of the Univ. of the District of Columbia*, 714 A.2d 776, 1998 D.C. App. LEXIS 120 (1998).

Lottery Board employee's resignation was involuntary where Board misled employee by telling him that as probationary employee he had no retention or procedural rights and employee relied upon misleading information. D.C. Code 1981, § 1-608.1(12). *Cocome v. District of Columbia Lottery & Charitable Games Control Bd.*, 560 A.2d 547, 1989 D.C. App. LEXIS 124 (1989).

Subchapter VIII-A. Educational Service.

§ 1-608.01a. Creation of the Educational Service.

(a) For the purpose of this subchapter, the term "Board" means the Board of Trustees of the University of the District of Columbia for educational employees of the University of the District of Columbia.

(b) The Board shall issue rules and regulations governing employment, advancement, and retention in the Educational Service, which shall include all educational employees of the District of Columbia employed by the Board. The rules and regulations shall be indexed and cross referenced as to the incumbent classification and compensation system.

(1) *University of the District of Columbia.* — In keeping with the purpose of this chapter, the Board of Trustees of the University of the District of Columbia shall issue rules and regulations embodying principles of merit and equal employment governing, among others, appointment, promotion, retention, reassignment, professional development and training, classification, and salary administration (except as provided in § 1-602.03), employee benefits, reduction-in-force, adverse action, grievances, and appeals, provided that such rules and regulations concerning adverse actions and regulations covering adverse actions and appeals shall be consistent with subchapters V, VI, VII, XVII-A and XVII of this chapter.

(2)(A)(i) Excluding those employees in a recognized collective bargaining unit, those employees appointed before January 1, 1980, those employees who are based at a local school or who provide direct services to individual students, and those employees required to be excluded pursuant to a court order (collectively, "Excluded Employees"), a person appointed to a position within the Educational Service shall serve without job tenure.

(ii) Except for Excluded Employees, the provisions of this paragraph shall apply to all nonschool-based personnel, as defined in § 1-603.01(13C), including:

(I) All Educational Service employees within the District of Columbia Public Schools (“DCPS”);

(II) Repealed.

(III) All Educational Service employees within the Office of the State Superintendent of Education.

(B)(i) A person employed within the Educational Service in DCPS, the Office of the State Superintendent of Education as of January 22, 2008, who is not an Excluded Employee shall be reappointed noncompetitively to the Educational Service, in accordance with subparagraph (A) of this paragraph. A person employed by the Office of the State Superintendent of Education (“OSSE”) as of August 16, 2008, who is not an Excluded Employee, shall be reappointed noncompetitively to the Educational Service, in accordance with subparagraph (A) of this paragraph.

(ii) Within 30 days of January 22, 2008, or in the case of employees employed by the OSSE before August 16, 2008, within 30 days of August 16, 2008, the Mayor shall notify in writing each employee of his or her reappointment. The employee shall accept or decline such reappointment within 10 days of receipt of the reappointment notice.

(iii) A person declining such reappointment shall receive a written 15-day separation notice and shall be entitled to severance pay pursuant to § 1-624.09.

(iv) An employee who accepts reappointment who is subsequently terminated shall be terminated in accordance with subparagraph (C)(ii) and (iii) of this paragraph.

(C)(i) A person employed within the Educational Service in DCPS, or the Office of the State Superintendent of Education who is not an Excluded Employee, shall be a probationary employee for one year from his or her date of hire (“probationary period”) and may be terminated without notice or evaluation.

(ii) Following the probationary period, an employee may be terminated, at the discretion of the Mayor; provided, that the employee has been provided a 15-day separation notice and has had at least one evaluation within the preceding 6 months, a minimum of 30 days prior to the issuance of the separation notice.

(iii) An employee terminated for non-disciplinary reasons may be given severance pay in accordance with § 1-609.03(f).

(D) The Mayor may terminate without notice or evaluation an employee for the following reasons:

(i) Conviction of a felony at any time following submission of an employee’s job application;

(ii) Conviction of another crime at any time following submission of an employee’s job application when the crime is relevant to the employee’s position, job duties, or job activities;

(iii) Commission of any knowing or negligent material misrepresen-

tation on an employment application or other document given to a government agency;

(iv) Commission of any on-duty or employment-related act or omission that the employee knew or reasonably should have known is a violation of law; or

(v) Commission of any on-duty or employment-related act that is gross insubordination, misfeasance, or malfeasance.

(E) A terminated employee shall retain his or her veterans preference eligibility, if any, in accordance with federal laws and regulations issued by the United States Office of Personnel Management but shall be separated without competition, assignment rights, retreat rights, a right to re-assignment under either the Agency Reemployment Priority Program or the Displaced Employee Program established pursuant to section 2400 of the District of Columbia Personnel Manual, or a right to any internal or administrative review, subject to any right under the Unit A of Chapter 14 of Title 2 [§ 2-1401.01 et seq.], federal law, or common law.

(F)(i) The Mayor shall establish:

(I) A positive recruitment program designed to meet current and projected personnel needs;

(II) A procedure for open competition for initial appointment to the Educational Service, designed to achieve maximum objectivity, reliability, and validity through a practical assessment of attributes necessary to successful job performance and career development, and appointments of persons, made on the basis of merit, by selection from the highest qualified available eligible persons based on specific job requirements, with appropriate regard for affirmative-action goals and veterans preference as provided in subchapter VII of this chapter; and

(III) Written position descriptions for each position within the Educational Service and a process for updating the descriptions to maintain accurate and current position descriptions.

(ii) The Mayor shall provide a written copy of the relevant position description to each new employee and to each reappointed employee upon employment or reappointment.

(G) Appointments to the Educational Service of persons shall be made in accordance with equal employment opportunity principles, as set forth in subchapter VII of this chapter.

(H) Temporary and other time-limited appointments, which do not confer permanent status, may be made in appropriate cases, at the discretion of the Mayor, including emergency appointments to provide for the maintenance of essential services in situations of natural disaster or catastrophes, where normal-employment procedures are impracticable.

(I) Within 180 days of January 22, 2008, the Mayor shall submit a list to the Council, for informational purposes, of those people employed within the Educational Service in DCPS, the Office of the State Superintendent of Education, and the Office of Public Education Facilities Modernization as of the effective date of the Emergency Act [January 22, 2008], who, pursuant to subparagraph (B) of this paragraph, declined reappointment and were termi-

nated and who accepted reappointment but were subsequently terminated. The Mayor shall maintain a database of this information on an ongoing basis to be submitted to the Council pursuant to section 5 of the Public Education Personnel Reform Amendment Act of 2008, effective March 20, 2008 (D.C. Law 17-122; 55 DCR 1506).

(J)(i) The Mayor shall establish reduction-in-force procedures, including:

(I) A prescribed order of separation based on District residency and veterans preference;

(II) Priority reemployment consideration of separated employees; and

(III) Job sharing and reduced hours, if feasible.

(ii) Notwithstanding any other provision of law or regulation, an Excluded Employee or a nonschool-based employee shall not be assigned or reassigned to replace a classroom teacher.

(iii) For the purposes of this subparagraph, the term “reduction-in-force” means a reduction in personnel, the need for which shall be declared by the Mayor, that is necessary due to a lack of funding or the discontinuance of a department, program, or function of an agency. A reduction-in-force shall not be considered a punitive or corrective action as it relates to an employee separated pursuant to the reduction in force and no blemish on an employee’s record shall ensue.

(3) Repealed.

(c)(1) For the purpose of this subsection, “relative” means, with respect to a public official, an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, spouse, domestic partner, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

(2) A public official who appoints, employs, promotes, or advances, or advocated such appointment, employment, promotion, or advancement of any individual in violation of this subsection shall reimburse the District for any funds improperly paid to such individual.

(3) The Board may issue rules and regulations authorizing the temporary employment, in the event of emergencies resulting from natural disasters or similar unforeseen events or circumstances, of individuals whose employment would otherwise be prohibited by this subsection.

(4) A public official may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a position in the agency in which he or she is serving or over which he or she exercises jurisdiction or control, any individual who is a relative of the public official. An individual may not be appointed, employed, promoted, or advanced in or to a position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official who is serving in or exercising jurisdiction or control over the agency, and is a relative of the individual.

(d)(1) Notwithstanding any provision of Unit A of Chapter 14 of Title 2, an applicant for District government employment in the Educational Service who

is a bona fide resident of the District at the time of application shall be given a 10-point hiring preference over a nonresident applicant unless the applicant declines the preference. This preference shall be in addition to, and not instead of, qualifications established for the position.

(2) An applicant claiming a hiring preference shall submit 8 proofs of bona fide residency in a manner determined by the Mayor or the Board. If hired, the employee shall agree in writing to maintain bona fide District residency for a period of 7 consecutive years from the effective date of hire and shall provide proof of bona fide residency annually to the director of personnel for the agency for the first 7 years of employment. Failure to maintain District residency for the consecutive 7-year period shall result in forfeiture of employment.

(3) Any individual hired under a previous residency law who was subject to a residency requirement shall be treated as if the individual claimed a preference and was hired pursuant to the Residency Preference Amendment Act of 1988.

(4) In reductions-in-force, a resident District employee shall be preferred for retention and reinstatement of employment over a non-resident District employee. For purposes of this paragraph only, a non-resident District employee hired prior to January 1, 1980, shall be considered a District resident. When the provisions of this paragraph conflict with an effective collective bargaining agreement, the terms of the collective bargaining agreement shall govern.

(5) A District employee hired in the Educational Service prior to March 16, 1989, who elects to apply for a competitive promotion in the Educational Service and to claim a preference, shall be bound by the provisions of paragraph (2) of this subsection.

(6) The Mayor or the Board shall, pursuant to subchapter I of Chapter 5 of Title 2, issue proposed rules to implement the preference system established by this subsection. The proposed rules shall be submitted to the Council no later than February 1, 1989, for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(7)(A) Except as provided in subparagraph (B), the Mayor or the Board may not require an individual to reside in the District of Columbia as a condition of employment in the Educational Services.

(B) The Mayor or the Board shall provide notice to each employee in the Educational Service of the provisions of this subsection that require an employee claiming a residency preference to maintain District residency for 7 consecutive years, and shall only apply such provisions with respect to employees claiming a residency preference on or after March 16, 1989.

(e) Repealed.

(f) Each Board shall submit to the Council quarterly reports detailing the names of all new employees, their pay schedules, titles, and place of residence. The report shall explain the reasons for employment of non-District residents. The Board shall integrate into its yearly performance objectives the rate of success in hiring District residents. The Boards shall conduct annual audits of

its personnel records to ensure that all persons claiming a residency preference at time of hiring complies with the provisions of subsection (d)(2) of this section. Audit reports shall be submitted annually to the Council.

(Mar. 3, 1979, D.C. Law 2-139, § 801A, 25 DCR 5740; Aug. 1, 1979, D.C. Law 3-14, 2(b), 25 DCR 25 10565; Aug. 7, 1980, D.C. Law 3-81, § 2(h), 27 DCR 2632; May 22, 1981, D.C. Law 4-2, § 2(d), (e), 28 DCR 2586; Apr. 3, 1982, D.C. Law 4-92, § 2(d), (e), 29 DCR 745; Mar. 14, 1985, D.C. Law 5-159, § 21, 32 DCR 30; Aug. 1, 1985, D.C. Law 6-15, § 7(b), 32 DCR 3570; Feb. 24, 1987, D.C. Law 6-177, § 3(h), 33 DCR 7241; Mar. 16, 1989, D.C. Law 7-203, § 2(b), 36 DCR 450; Nov. 21, 1989, 103 Stat. 1277, Pub. L. 101-168, § 110B(b)(2); Sept. 26, 1995, D.C. Law 11-52, § 1001(b), 42 DCR 3684; Mar. 5, 1996, D.C. Law 11-98, § 301(a), (b), 43 DCR 5; Apr. 26, 1996, 110 Stat. 215, Pub. L. 104-134, § 145(2); Aug. 1, 1996, D.C. Law 11-152, § 302(g), 43 DCR 2978; Sept. 9, 1996, 110 Stat. 2372, Pub. L. 104-194, § 138(2); June 10, 1998, D.C. Law 12-124, § 101(f), 45 DCR 2464; July 24, 1998, D.C. Law 12-138, § 2(b), 45 DCR 2972; Oct. 21, 1998, 112 Stat. 2681-146, Pub. L. 105-277, § 153; Apr. 12, 2000, D.C. Law 13-91, § 103(i), 47 DCR 520; Apr. 24, 2007, D.C. Law 16-305, § 3(e), 53 DCR 6198; Feb. 6, 2008, D.C. Law 17-108, § 203(e), 54 DCR 10993; Mar. 20, 2008, D.C. Law 17-122, § 2(a), 55 DCR 1506; Aug. 16, 2008, D.C. Law 17-219, §§ 4004(a), 4019(a), 55 DCR 7598; Sept. 12, 2008, D.C. Law 17-231, § 3(d), 55 DCR 6758; Mar. 25, 2009, D.C. Law 17-353, §§ 224(a), 225, 56 DCR 1117.)

Section references. — This section is referred to in § 1-602.04.

Prior Codifications. — 1981 Ed., § 1-609.1.

1973 Ed., § 1-338.2.

Effect of amendments. — D.C. Law 13-91, in par. (1) of subsec. (b), substituted “subchapters V, VI, VII, XVII-A and XVIII” for “subchapters V, VI, VII, XVII and XVIII”.

D.C. Law 16-305, in subsec. (b)(2)(K), substituted “persons with disabilities” for “handicapped persons”.

D.C. Law 17-108, rewrote subsecs. (d)(1) and (2); in subsec. (d)(7)(B), substituted “7 consecutive years” for “5 consecutive years”; and added subsec. (f).

D.C. Law 17-122, in subsec. (a), substituted “Board” for “Boards” and deleted “the District of Columbia Board of Education for educational employees of the Board of Education and” following “means”; in subsec. (b), substituted “Board” for “Boards” and rewrote par. (2); in subsec. (c), substituted “Board” for “Boards”; in subsec. (d), substituted “Mayor or Board” for “Boards”.

D.C. Law 17-219, in subsec. (b)(2), repealed subpar. (A)(ii)(II), rewrote subpar. (A)(ii)(III), substituted “the Office of the State Superintendent of Education as of” for “the Office of the State Superintendent for Education, and the Office of Public Education Facilities Modernization as of” and inserted “A person employed by the Office of the State Superintendent of Edu-

cation (‘OSSE’) as of August 16, 2008, who is not an Excluded Employee, shall be reappointed noncompetitively to the Educational Service, in accordance with subparagraph (A) of this paragraph.” in subpar. (B)(i), inserted “or, in the case of employees employed by the OSSE before August 16, 2008, within 30 days of August 16, 2008,” in subpar. (B)(ii), and substituted “or the Office of the State Superintendent of Education who is not” for “the Office of the State Superintendent for Education, or the Office of Public Education Facilities Modernization who is not” in subpar. (C)(i).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 1001 of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(a) of Public Education Personnel Reform Emergency Amendment Act of 2007 (D.C. Act 17-241, January 22, 2008, 55 DCR 983).

For temporary (90 day) additions, see §§ 3, 5 of Public Education Personnel Reform Emergency Amendment Act of 2008 (D.C. Act 17-241, January 22, 2008, 55 DCR 983).

For temporary (90 day) amendment, see § 4019(a) of Fiscal Year 2009 Budget Support Emergency Act of 2008 (D.C. Act 17-468, July 28, 2008, 55 DCR 8746).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see His-

torical and Statutory Notes following § 1-601.01.

Legislative history of Law 3-14. — For legislative history of D.C. Law 3-14, see Historical and Statutory Notes following § 1-608.01.

Legislative history of Law 3-81. — For legislative history of D.C. Law 3-81, see Historical and Statutory Notes following § 1-602.02.

Legislative history of Law 4-2. — For legislative history of D.C. Law 4-2, see Historical and Statutory Notes following § 1-608.01.

Legislative history of Law 4-92. — For legislative history of D.C. Law 4-92, see Historical and Statutory Notes following § 1-608.01.

Legislative history of Law 5-159. — Law 5-159 was introduced in Council and assigned Bill No. 5-540, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 20, 1984 and December 4, 1984, respectively. Signed by the Mayor on December 10, 1984, it was assigned Act No. 5-224 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-15. — For legislative history of D.C. Law 6-15, see Historical and Statutory Notes following § 1-608.01.

Legislative history of Law 6-177. — For legislative history of D.C. Law 6-177, see Historical and Statutory Notes following § 1-601.02.

Legislative history of Law 7-203. — For legislative history of D.C. Law 7-203, see Historical and Statutory Notes following § 1-608.01.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 1-603.01.

Legislative history of Law 11-78. — For legislative history of D.C. Law 11-78, see Historical and Statutory Notes following § 1-624.07.

Legislative history of Law 11-98. — For legislative history of D.C. Law 11-98, see Historical and Statutory Notes following § 1-624.07.

Legislative history of Law 11-152. — For legislative history of D.C. Law 11-152, see Historical and Statutory Notes following § 1-602.02.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Legislative history of Law 12-138. — For legislative history of D.C. Law 12-138, see Historical and Statutory Notes following § 1-608.01.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-602.03.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 1-307.02.

Legislative history of Law 17-108. — For Law 17-108, see notes following § 1-209.05.

Legislative history of Law 17-122. — Law 17-122, the “Public Education Personnel Reform Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-450 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 11, 2007, and January 8, 2008, respectively. Signed by the Mayor on January 29, 2008, it was assigned Act No. 17-271 and transmitted to both Houses of Congress for its review. D.C. Law 17-122 became effective on March 20, 2008.

Legislative history of Law 17-219. — For Law 17-219, see notes following § 1-308.29.

Legislative history of Law 17-231. — For Law 17-231, see notes following § 1-301.45.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 1-129.05.

Short title. — Short title: Section 4003 of D.C. Law 17-219 provided that subtitle B of title IV of the act may be cited as the “Educational Service Amendment Act of 2008”.

Repeal of Law 12-138. — Section 153 of Pub. L. 105-277, 112 Stat. 2681-146, repealed D.C. Law 12-138, which had added a subsection (e) to this section.

References in text. — The “Residency Preference Amendment Act of 1988”, referred to in subsection (d)(3), is D.C. Law 7-203.

Editor's notes. — Repeal of § 3 of Law 6-177: Section 4(b) of D.C. Law 6-177 provided that the provisions of § 3 are repealed on the 1st day following the 36-month period after February 24, 1987.

Repeal of § 4(b) of Law 6-177: Section 3(b) of D.C. Law 8-74, effective March 15, 1990, provided that § 4(b) of D.C. Law 6-177 is repealed.

Editor's note: Both D.C. Law 11-52 and D.C. Law 11-98 added a new (b)(2)(L-i). The versions were almost identical, and effect has been given to D.C. Law 11-98.

Sections 3 to 5 of D.C. Law 17-122 provided: “Sec. 3. Rulemaking.

“The Mayor shall issue rules to implement the provisions of section 2. The proposed rules shall be submitted to the Council for a 45-day period of review. If the Council does not approve or disapprove the proposed rules, by resolution, within the 45-day review period, the proposed rules shall be deemed approved.

“Sec. 4. Voluntary early-retirement request.

“The Mayor shall submit a request to the United States Office of Personnel Management that it authorize voluntary early retirement to employees in the Educational Service classification of the District of Columbia Public Schools, the Office of the State Superintendent of Education, and the Office of Public Education Facilities Modernization hired prior to 1987 and entitled to federal benefit payments.

“Sec. 5. Evaluation and re-authorization.

"On September 15, 2012, the Mayor shall submit to the Council an assessment of the personnel reform enacted by this act, which shall include:

"(1) A comprehensive list of the employees terminated pursuant to this act, as described in section 801A(b)(2)(I) of the District of Columbia Government Comprehensive Merit Personnel

Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-608.01a(b)(2)(I); and

"(2) An assessment of the progress in public education achieved as a result of this act that warrants continuation of the provisions of this act."

CASE NOTES

ANALYSIS

In general.
Reduction in force.

In general.

Public employees do not lose their common law rights to sue for their injuries when neither those injuries nor their consequences trigger the exclusive provisions of the Comprehensive Merit Personnel Act (CMPA). Wash. Teachers' Union, Local # 6 v. D.C. Pub. Sch., 960 A.2d 1123, 2008 D.C. App. LEXIS 476 (2008).

If a substantial question exists as to whether the Comprehensive Merit Personnel Act (CMPA) applies, the Act's procedures must be followed, and the claim must initially be submitted to the appropriate District of Columbia agency. Wash. Teachers' Union, Local # 6 v. D.C. Pub. Sch., 960 A.2d 1123, 2008 D.C. App. LEXIS 476 (2008).

University rule providing that employee may file appeal if employee believes that university has incorrectly applied reduction in force rules and regulations confers right of appeal to Office of Employee Appeals only to noneducational employees, in light of provisions of the Government Comprehensive Merit Personnel Act on appeals of reduction in force, from which educational employees are expressly excluded. D.C. Code 1981, §§ 1-602.3(b), 1-606.1 et seq., 1-606.3, 1-609.1(b)(1). Davis v. University of

Dist. of Columbia, 603 A.2d 849, 1992 D.C. App. LEXIS 34 (1992).

Once the University of the District of Columbia made a prima facie showing that it followed proper procedures and considered the correct subjective criteria, the burden should have shifted to the applicant for tenure to show her entitlement to promotion. University of D.C. v. Ausbrooks, 117 WLR 721 (Super. Ct. 1989).

Reduction in force.

Unions representing school district employees challenging reduction in force (RIF) conducted by District of Columbia Public Schools (DCPS) under Abolishment Act procedures had to present their claims in the first instance to the Office of Employee Appeals (OEA), rather than the Superior Court, though the unions claimed that they were asserting a stand-alone challenge to the RIF regulations, as rulemaking for an Abolishment Act RIF was not essential, given that all of the material RIF procedures were encompassed within the Abolishment Act, the critical question raised by the unions was whether DCPS correctly applied the statutory procedures governing an RIF under the Abolishment Act, and the OEA was the independent, specialized agency established to handle personnel-related employee appeals. Wash. Teachers' Union, Local # 6 v. D.C. Pub. Sch., 960 A.2d 1123, 2008 D.C. App. LEXIS 476 (2008).

Subchapter VIII-B. Government Attorneys.

Part A

GENERAL.

§ 1-608.51. Definitions.

For the purposes of this subchapter, the term:

(1) "Agency" means any subordinate or independent agency of the District government, but does not include the following entities:

(A) Superior Court or the Court of Appeals;

(B) District of Columbia Financial Responsibility and Management Assistance Authority;

- (C) Board of Parole;
- (D) Repealed;
- (E) Housing Finance Agency;
- (F) Pretrial Services Agency;
- (G) Public Defender Service;
- (H) Water and Sewer Authority;
- (I) Washington Convention and Sports Authority;
- (J) Housing Authority; or

(K) Any agency or unit thereof excluded by court order from coverage pursuant to this chapter.

(2) "Attorney" means any position which is classified as part of Series 905, except for any position that is occupied by a person whose duties, in whole or in substantial part, consist of hearing cases as an administrative law judge or as an administrative hearing officer.

(3) "Senior Executive Attorney Service position" means:

(A) Any attorney position which is classified above DS-15, or an equivalent position, and in which the employee:

- (i) Directs the work of an organizational unit;
- (ii) Is held accountable for the success of one or more specific programs or projects;
- (iii) Monitors progress toward organizational goals and periodically evaluates and makes appropriate adjustments to these goals;
- (iv) Supervises the work of employees other than personal assistants;
- (v) Performs important legal policy-making or policy-determining functions; or
- (vi) Provides significant leadership in legal counseling or in the trial of cases;

(B) Any attorney who is a Deputy Attorney General, Chief Deputy Attorney General, Special Deputy Attorney General, Senior Counsel to the Attorney General, General Counsel or the equivalent for any agency subordinate to the Mayor, or any other attorney in the Office of the Attorney General for the District of Columbia who routinely reports directly to the Attorney General; or

(C) Any attorney who is a General Counsel employed by an independent agency, except attorneys employed by the Chief Financial Officer.

(Mar. 3, 1979, D.C. Law 2-139, § 851, as added Apr. 20, 1999, D.C. Law 12-260, § 2(j), 46 DCR 1318; Apr. 12, 2000, D.C. Law 13-91, § 110(a), 47 DCR 520; July 12, 2001, D.C. Law 14-18, § 9(b), 48 DCR 4047; Oct. 20, 2005, D.C. Law 16-33, § 3012(a), 52 DCR 7503; Mar. 2, 2007, D.C. Law 16-191, § 5(p)(1), 53 DCR 6794; Mar. 3, 2010, D.C. Law 18-111, § 2082(b), 57 DCR 181.)

Prior Codifications. — 1981 Ed., § 1-609.51.

Effect of amendments. — D.C. Law 13-91, in subpar. (K) of par. (1), substituted "pursuant to this chapter" for "pursuant to the CMPA".

D.C. Law 14-18 repealed subpar. (D) of par. (1) which had read:

"(D) Health and Hospitals Public Benefit Corporation;"

D.C. Law 16-33, rewrote pars. (3)(B) and (3)(C).

D.C. Law 16-191, in par. (3)(B), validated a previously made technical correction.

D.C. Law 18-111, in par. (1)(I), substituted

“Washington Convention and Sports Authority” for “Washington Convention Center Authority”.

Emergency legislation. — For temporary addition of subchapter IX-B, see § 2(j) of the Legal Service Establishment Emergency Amendment Act of 1998 (D.C. Act 12-620, January 22, 1999, 46 DCR 1343).

For temporary (90 day) amendment of section, see § 3012(a) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of section, see § 2082(b) of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 2082(b) of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 12-260. — For legislative history of D.C. Law 12-260, see Historical and Statutory Notes following § 1-604.04.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-602.03.

Legislative history of Law 14-18. — For Law 14-18, see notes following § 1-523.01.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 1-617.17.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 1-325.44.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 1-301.181.

Short title. — Short title of subtitle B of title III of Law 16-33: Section 3011 of D.C. Law 16-33 provided that subtitle B of title III of the act may be cited as the Legal Service Amendment Act of 2005.

§ 1-608.52. Creation of the Legal Service.

There is established within the District government a Legal Service for independent and subordinate agencies to ensure that the law business of the District government is responsive to the needs, policies, and goals of the District and is of the highest quality. In order to improve the quality and timeliness of the legal services that support the lawful activities, objectives, and policies of the District government, all attorneys who perform work for subordinate agencies shall become employees of the Office of the Attorney General for the District of Columbia.

(Mar. 3, 1979, D.C. Law 2-139, § 852, as added Apr. 20, 1999, D.C. Law 12-260, § 2(j), 46 DCR 1318; Oct. 20, 2005, D.C. Law 16-33, § 3012(b), 52 DCR 7503.)

Prior Codifications. — 1981 Ed., § 1-609.52.

Effect of amendments. — D.C. Law 16-33 rewrote the section, which had read as follows: “There is established within the District government a Legal Service for independent and subordinate agencies to ensure that the law business of the District government is responsive to the needs, policies, and goals of the District and is of the highest quality. In order to improve the quality and timeliness of the legal services that support the lawful activities, objectives, and policies of the District government, this subchapter shall vest in the Corporation Counsel supervisory authority of

attorneys employed by the subordinate agencies.”

Emergency legislation. — For temporary addition of subchapter, see note to § 1-608.51.

For temporary (90 day) amendment of section, see § 3012(b) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 12-260. — For legislative history of D.C. Law 12-260, see Historical and Statutory Notes following § 1-604.04.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 1-617.17.

§ 1-608.53. Creation of the Senior Executive Attorney Service.

(a) A Senior Executive Attorney Service is established as part of the Legal Service. The Senior Executive Attorney Service shall be administered to assure

that Senior Executive Attorneys are accountable and responsible for the effectiveness and productivity of employees under their supervision.

(b) Notwithstanding subchapter XVI-A, an appointment to the Senior Executive Attorney Service shall be at will employment, or as provided by statute for a term of years, subject to removal for cause as may be provided in the appointing statute.

(c) A Senior Executive Attorney who is to be removed or whose grade is to be reduced may be appointed, at the discretion of the Attorney General, to a position in the Legal Service which is available and for which the attorney is qualified, if the removal or reduction in grade is not for delinquency or misconduct.

(d) A Senior Executive Attorney employed by the Office of the Attorney General shall serve at the pleasure of the Attorney General.

(e) A Senior Executive Attorney employed by the Office of the Attorney General who performs work primarily for any other subordinate agency, whether located at that agency or not, shall serve at the pleasure of the Attorney General, and the Attorney General shall consult with the agency head before making any decision concerning the termination of a Senior Executive Attorney who performs work primarily for the other subordinate agency. The Senior Executive Attorney shall serve at the pleasure of the agency head where the Attorney General has delegated direction and control over the attorney to the agency head pursuant to § 1-608.55.

(f) A Senior Executive Attorney employed by an independent agency shall serve at the pleasure of the agency head, or as provided by statute for a term of years, subject to removal for cause as may be provided in the appointing statute.

(g) Persons currently holding an appointment in the Excepted Service which meet the definition of a Senior Executive Attorney Service position as defined in § 1-608.51(3) shall be appointed to the Senior Executive Attorney Service unless the employee declines the appointment. A person who declines this appointment shall be appointed within 3 months to another position in the Legal Service if a vacant position for which the employee qualifies is available and is acceptable to the employee.

(h) An individual appointed to the Senior Executive Attorney Service shall be paid separation pay of up to 12 weeks of his or her basic pay upon separation for non-disciplinary reasons.

(Mar. 3, 1979, D.C. Law 2-139, § 853, as added Apr. 20, 1999, D.C. Law 12-260, § 2(j), 46 DCR 1318; Apr. 12, 2000, D.C. Law 13-91, § 110(b), 47 DCR 520; Oct. 20, 2005, D.C. Law 16-33, § 3012(c), 52 DCR 7503; Apr. 7, 2006, D.C. Law 16-91, § 121, 52 DCR 10637; Mar. 2, 2007, D.C. Law 16-191, § 5(p)(2), 53 DCR 6794.)

Prior Codifications. — 1981 Ed., § 1-609.53.

Effect of amendments. — D.C. Law 13-91 rewrote subsec. (b), which previously read:

“An appointment to the Senior Executive

Attorney Service shall be at-will employment.”; and in subsec. (f), added “, or as provided by statute for a term of years, subject to removal for cause as may be provided in the appointing statute”.

D.C. Law 16-33, in subsecs. (a) through (d), substituted "Attorney General" for "Corporation Counsel"; and rewrote subsec. (e).

D.C. Law 16-91, in subsecs. (a) through (d), validated previously made technical corrections.

D.C. Law 16-191, in subsecs. (a) to (d), validated previously made technical corrections.

Emergency legislation. — For temporary addition of subchapter, see note to § 1-608.51.

For temporary (90-day) amendment of section, see § 3(a) of the Legal Services Clarification and Technical Emergency Amendment Act of 1999 (D.C. Act 13-203, December 8, 1999, 46 DCR 10456).

For temporary (90-day) amendment of section, see § 3(a) of the Legal Services Clarification and Technical Congressional Review

Emergency Amendment Act of 2000 (D.C. Act 13-293, March 7, 2000, 47 DCR 2063).

For temporary (90 day) amendment of section, see § 3012(c) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 12-260. — For legislative history of D.C. Law 12-260, see Historical and Statutory Notes following § 1-604.04.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-602.03.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 1-617.17.

Legislative history of Law 16-91. — For Law 16-91, see notes following § 1-301.45.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 1-325.44.

§ 1-608.54. Appointment of attorneys.

(a) Attorneys employed by the Office of the Attorney General shall be hired by the Attorney General. Attorneys, including Senior Executive Attorneys, employed by the Office of the Attorney General who perform work primarily for any other subordinate agency, whether located at that agency or not, shall be hired by the Attorney General after consultation with the head of the other subordinate agency.

(b) Attorneys employed by an independent agency shall be hired by the head of the agency or the Senior Executive Attorney designee.

(c) Legal Service attorneys may be hired noncompetitively.

(Mar. 3, 1979, D.C. Law 2-139, § 854, as added Apr. 20, 1999, D.C. Law 12-260, § 2(j), 46 DCR 1318; Apr. 12, 2000, D.C. Law 13-91, § 110(c), 47 DCR 520; Oct. 20, 2005, D.C. Law 16-33, § 3012(d), 52 DCR 7503.)

Prior Codifications. — 1981 Ed., § 1-609.54.

Effect of amendments. — D.C. Law 13-91, in subsec. (b), added "or the Senior Executive Attorney designee"; and added subsec. (c).

D.C. Law 16-33 rewrote subsec. (a), which had read as follows: "(a) Attorneys employed by the Office of the Corporation Counsel, wherever located in the District government, shall be hired by the Corporation Counsel. Attorneys, including Senior Executive Attorneys, employed by any other subordinate agency shall be hired by the head of the agency with the approval of the Corporation Counsel."

Emergency legislation. — For temporary addition of subchapter, see note to § 1-608.51.

For temporary (90-day) amendment of section, see § 3(b) of the Legal Services Clarification and Technical Emergency Amendment Act

of 1999 (D.C. Act 13-203, December 8, 1999, 46 DCR 10456).

For temporary (90-day) amendment of section, see § 3(b) of the Legal Services Clarification and Technical Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-293, March 7, 2000, 47 DCR 2063).

For temporary (90 day) amendment of section, see § 3012(d) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 12-260. — For legislative history of D.C. Law 12-260, see Historical and Statutory Notes following § 1-604.04.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-602.03.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 1-617.17.

§ 1-608.55. Supervision of attorneys.

(a) Attorneys employed by the Office of the Attorney General, wherever

located in the District government, including Senior Executive attorneys, shall act under the direction, supervision, and control of the Attorney General.

(b) Notwithstanding the authority vested in the Attorney General by subsection (a) of this section, the Attorney General may delegate the direction, supervision and control of attorneys who perform work primarily for any other subordinate agency, whether located at the agency or not, to the head of that agency as follows:

(1) After consulting with the agency head, delegate in writing the direction, supervision and control of all or some of the attorneys who perform work primarily for the agency, including Senior Executive Attorneys. This delegation may be withdrawn at any time, in writing, after consulting with the agency head.

(2) The delegation and its withdrawal, if any, pursuant to paragraph (1) of this subsection shall cite the reasons for the delegation or withdrawal of delegation using the following criteria:

(A) Agency size;

(B) Agency workload;

(C) Necessity or lack of necessity for agency in-house counsel to engage in high level policy-making;

(D) Agency head or agency General Counsel or the equivalent, expressed preferences;

(E) Necessity or lack of necessity for Attorney General supervision;

(F) Practicality or impracticality of Attorney General supervision;

(G) Existence of a conflict of interest if the Attorney General supervises agency counsel; or

(H) Any other relevant factor as identified by the Attorney General.

(c) Attorneys employed by independent agencies shall act under the direction, supervision, and control of the respective agency heads.

(d) The Attorney General may:

(1) After consulting with the affected subordinate agency head, assign an attorney employed by the Office of the Attorney General who previously performed work primarily for the Office of the Attorney General to perform work primarily for the affected subordinate agency, whether located at the agency or not, in the Attorney General's discretion; or

(2) After consulting with the affected sending and receiving subordinate agency heads, assign an attorney employed by the Office of the Attorney General who previously performed work primarily for the sending agency, including the Office of the Attorney General, to perform work primarily for the receiving agency, whether located at the receiving agency or not in the Attorney General's discretion, unless the Attorney General has delegated the direction, supervision, and control of the attorney pursuant to subsection (b) of this section.

(Mar. 3, 1979, D.C. Law 2-139, § 855, as added Apr. 20, 1999, D.C. Law 12-260, § 2(j), 46 DCR 1318; Oct. 20, 2005, D.C. Law 16-33, § 3012(e), 52 DCR 7503.)

Prior Codifications. — 1981 Ed., § 1-609.55.

Effect of amendments. — D.C. Law 16-33, rewrote subsec. (a), (b) and (d).

Emergency legislation. — For temporary addition of subchapter, see note to § 1-608.51.

For temporary (90 day) amendment of section, see § 3012(e) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 12-260. — For legislative history of D.C. Law 12-260, see Historical and Statutory Notes following § 1-604.04.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 1-617.17.

§ 1-608.56. Disciplinary action for attorneys other than Senior Executive Attorneys.

(a) Notwithstanding subchapter XVI-A, a Legal Service attorney, other than a Senior Executive Attorney, shall be subject to disciplinary action, including removal, suspension, reduction in grade, or the placing of such attorney on enforced annual leave or enforced leave without pay, for unacceptable performance or for any reason that is not arbitrary or capricious.

(b) The disciplinary action provided for in subsection (a) of this section shall be taken by:

(1) The Attorney General when the attorney is employed by the Office of the Attorney General and performs work primarily for that Office, whether located in that Office or not;

(2) The Attorney General, after consulting with the agency head, when the attorney is employed by the Office of the Attorney General and performs work primarily for any other subordinate agency, whether located at the other subordinate agency or not, and there has been no delegation of authority pursuant to § 1-608.55; or

(3) The agency head or the Senior Executive Attorney designee when the attorney is employed by an independent agency or by a subordinate agency and the Attorney General has delegated authority over the attorney to the subordinate agency head pursuant to § 1-608.55.

(c) Any disciplinary action pursuant to this section taken against attorneys in subordinate agencies may be appealed to the Mayor. The Mayor's decision regarding this disciplinary action shall be final. The decision of the agency head or the Senior Executive Attorney designee shall be final with respect to disciplinary action taken against attorneys in independent agencies.

(d) The disciplinary provisions of § 1-609.05 shall apply to Legal Service employees of the Council of the District of Columbia.

(Mar. 3, 1979, D.C. Law 2-139, § 856, as added Apr. 20, 1999, D.C. Law 12-260, § 2(j), 46 DCR 1318; Apr. 12, 2000, D.C. Law 13-91, § 110(d), 47 DCR 520; Oct. 30, 2004, 118 Stat. 2230, Pub. L. 108-386, § 7; Oct. 20, 2005, D.C. Law 16-33, § 3012(f), 52 DCR 7503; Apr. 7, 2006, D.C. Law 16-91, § 110(b), 52 DCR 10637; Mar. 2, 2007, D.C. Law 16-191, § 5(p)(3), 53 DCR 6794.)

Prior Codifications. — 1981 Ed., § 1-609.56.

Effect of amendments. — D.C. Law 13-91, in subsec. (a), inserted "Notwithstanding subchapter XVII-A,".

Subsec. (110)(d)(1)(B) of D.C. Law 13-91 provided:

"(1) Subsection (a) is amended as follows:

"(B)(i) Strike the phrase 'or reduction in

grade,' and insert the phrase 'reduction in grade, or the placing of such attorney on enforced annual leave or enforced leave without pay,' in its place.

"(ii) The subparagraph shall apply upon the enactment of legislation by the United States Congress that states 'Notwithstanding any other law, section 3(c)(1)(B)(i) of the Legal Services Clarification and Technical Emergency

Amendment Act of 1999, adopted by the Council of the District of Columbia is enacted into law’.”

Pub. L. 108-386, in subsec. (a), substituted “reduction in grade, or the placing of such attorney on enforced annual leave or enforced leave without pay,” for “or reduction in grade.”

D.C. Law 16-33 rewrote subsec. (b), which had read as follows: “(b) The disciplinary action provided for in subsection (a) of this section shall be taken by: (1) The Corporation Counsel wh employed by the Office of the Corporation Counsel; (2) The Corporation Counsel, after consulting with the agency head, when the attorney is employed by a subordinate agency and there has been no delegation of authority over the attorney pursuant to § 1-608.55; or (3) The agency head or the Senior Exec Attorney designee when the attorney is employed by an independent agency or by a subordinate agency and the Corporation Counsel has delegated authority over the attorney to the subordinate agency head pursuant to § 1-608.55.”

D.C. Law 16-91 added subsec. (d).

D.C. Law 16-191, in subsec. (b)(2), validated a previously made technical correction.

Emergency legislation. — For temporary addition of subchapter, see note to § 1-608.51.

For temporary (90-day) amendment of section, see § 3(c) of the Legal Services Clarifica-

tion and Technical Emergency Amendment Act of 1999 (D.C. Act 13-203, December 8, 1999, 46 DCR 10456).

For temporary (90-day) amendment of section, see § 3(c) of the Legal Services Clarification and Technical Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-293, March 7, 2000, 47 DCR 2063).

For temporary (90 day) amendment of section, see § 3012(f) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 12-260. — For legislative history of D.C. Law 12-260, see Historical and Statutory Notes following § 1-604.04.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-602.03.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 1-617.17.

Legislative history of Law 16-91. — For Law 16-91, see notes following § 1-301.45.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 1-325.44.

Effective date. — Section 9 of Pub. L. 108-386, 118 Stat. 2228, the 2004 District of Columbia Omnibus Authorization Act, provided: “The amendments made by this section shall take effect on the date of the enactment of this Act.”

§ 1-608.57. Continuing legal education; management supervisory skills maintenance and enhancement; accountability standards and plans.

(a) The Attorney General shall establish an annual mandatory program of continuing legal education for attorneys in the Legal Service, other than attorneys employed by independent agencies. Attorneys in the Legal Service who supervise one or more other attorneys as part of their normal duties shall maintain and enhance their management and supervisory skills through at least annual in-house or other training arranged or approved by their employing agency.

(b) The Attorney General shall develop and establish a performance management system that includes accountability standards and individual accountability plans for all attorneys, including Senior Executive Attorneys, in the Legal Service who are under the direction and control of the Attorney General. The performance management system shall link pay to performance.

(c) The head of an independent agency that employs attorneys in the Legal Service shall develop and establish a performance management system that includes accountability standards and individual accountability plans for all attorneys in the Legal Service who are under their direction and control. The head of an independent agency may utilize the system developed for use by the Attorney General for attorneys under the direction and control of the Attorney General, for attorneys under the independent agency head’s direction and control. The performance management system shall link pay to performance.

(Mar. 3, 1979, D.C. Law 2-139, § 857, as added Apr. 20, 1999, D.C. Law 12-260, § 2(j), 46 DCR 1318; Oct. 20, 2005, D.C. Law 16-33, § 3012(g), 52 DCR 7503.)

Prior Codifications. — 1981 Ed., § 1-609.57.

Effect of amendments. — D.C. Law 16-33 substituted “Attorney General” for “Corporation Counsel”.

Emergency legislation. — For temporary addition of subchapter, see note to § 1-608.51.

For temporary (90 day) amendment of section, see § 3012(g) of Fiscal Year 2006 Budget

Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 12-260. — For legislative history of D.C. Law 12-260, see Historical and Statutory Notes following § 1-604.04.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 1-617.17.

§ 1-608.58. Pay parity for attorneys.

(a) Compensation for Legal Service attorneys shall be reviewed annually by the Mayor and shall be fixed in accordance with the following policy:

(1) The compensation of Senior Executive Attorneys shall be competitive with that provided by the federal government Senior Executive Service Salary Table for attorneys in the Washington metropolitan area having comparable duties, responsibilities, qualifications and experience; and

(2) The compensation of all other Legal Service Attorneys shall be competitive with that provided by the federal government General Schedule for attorneys in the Washington metropolitan area having comparable duties, responsibilities, qualifications, and experience.

(b) Pay shall be established by the Mayor and submitted by resolution to the Council pursuant to § 1-611.06.

(Mar. 3, 1979, D.C. Law 2-139, § 858, as added Apr. 20, 1999, D.C. Law 12-260, § 2(j), 46 DCR 1318.)

Prior Codifications. — 1981 Ed., § 1-609.58.

Emergency legislation. — For temporary addition of subchapter, see note to § 1-608.51.

Legislative history of Law 12-260. — For legislative history of D.C. Law 12-260, see Historical and Statutory Notes following § 1-604.04.

Resolutions. — Resolution 15-793, the “Office of the Attorney General for the District of Columbia Legal Services Non-Collective Bargaining Unit Employees Compensation System Changes Approval Resolution of 2004”, was approved effective December 21, 2004.

Resolution 15-795, the “Office of the Attorney

General Legal Services Managers Compensation System Establishment Rulemaking and Compensation System Changes Approval Resolution of 2004”, was approved effective December 21, 2004.

Resolution 16-319, the “Office of the Attorney General Legal Service Managers Compensation System Changes Approval Resolution of 2005”, was approved effective October 11, 2005.

Resolution 16-320, the “Office of the Attorney General for the District of Columbia Legal Service Non-Collective Bargaining Employees Compensation System Changes Approval Resolution of 2005”, was approved effective October 11, 2005.

§ 1-608.59. Residency.

(a) The provisions of § 1-608.01(e) shall apply to employment in the Legal Service other than the Senior Executive Service Attorney Service and attorneys employed by the Council of the District of Columbia.

(b) Notwithstanding the provisions of §§ 1-608.01(e) and 2-1401.01 et seq., any attorney appointed to the Senior Executive Service Attorney Service and attorneys employed by the Council of the District of Columbia shall become a

bona fide resident of the District within 180 days of the effective date of the appointment, and shall remain a District resident for the duration of the employment. Failure to become a District resident or to maintain District residency shall result in forfeiture of the position to which the person has been appointed.

(c) The Director of Personnel may waive the residency requirement in subsection (b) of this section for any individual appointed to a hard-to-fill position pursuant to § 1-608.53.

(Mar. 3, 1979, D.C. Law 2-139, § 859, as added Apr. 20, 1999, D.C. Law 12-260, § 2(j), 46 DCR 1318; Apr. 12, 2000, D.C. Law 13-91, § 110(e), 47 DCR 520.)

Prior Codifications. — 1981 Ed., § 1-609.59.

Effect of amendments. — D.C. Law 13-91, in subsecs. (a) and (b), substituted “the Senior Executive Service Attorney Service and attorneys employed by the Council of the District of Columbia” for “the Senior Executive Attorney Service”.

Emergency legislation. — For temporary addition of subchapter, see note to § 1-608.51.

For temporary (90-day) amendment of section, see § 3(d) of the Legal Services Clarification and Technical Emergency Amendment Act

of 1999 (D.C. Act 13-203, December 8, 1999, 46 DCR 10456).

For temporary (90-day) amendment of section, see § 3(d) of the Legal Services Clarification and Technical Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-293, March 7, 2000, 47 DCR 2063).

Legislative history of Law 12-260. — For legislative history of D.C. Law 12-260, see Historical and Statutory Notes following § 1-604.04.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-602.03.

§ 1-608.60. Reporting.

No later than one year after April 20, 1999, the Corporation Counsel shall report, in writing, to the Mayor and the Council concerning all aspects of the operation of the Legal Service since its establishment. This report shall include a description of:

(1) The effect of any pay increase approved for attorneys in the Legal Service on the quality of applicants for positions in the Legal Service and the retention of highly qualified attorneys;

(2) The experience under the new standards for adverse and corrective actions;

(3) The programs established for legal and management training;

(4) The performance management system established, including the results obtained from linking the award of additional income allowances to performance; and

(5) Any other matters that the Corporation Counsel identifies as relevant.

(Mar. 3, 1979, D.C. Law 2-139, § 860, as added Apr. 20, 1999, D.C. Law 12-260, § 2(j), 46 DCR 1318; Apr. 12, 2000, D.C. Law 13-91, § 110(f), 47 DCR 520.)

Prior Codifications. — 1981 Ed., § 1-609.60.

Effect of amendments. — D.C. Law 13-91 redesignated former subsecs. (a) to (e) as subsecs. (1) to (5), respectively.

Emergency legislation. — For temporary addition of subchapter, see note to § 1-608.51.

Legislative history of Law 12-260. — For legislative history of D.C. Law 12-260, see Historical and Statutory Notes following § 1-604.04.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-602.03.

§ 1-608.61. Rulemaking.

The Attorney General may adopt rules to implement the provisions of this subchapter in accordance with subchapter I of Chapter 5 of Title 2.

(Mar. 3, 1979, D.C. Law 2-139, § 861, as added Apr. 20, 1999, D.C. Law 12-260, § 2(j), 46 DCR 1318; Oct. 20, 2005, D.C. Law 16-33, § 3012(h), 52 DCR 7503.)

Prior Codifications. — 1981 Ed., § 1-609.61.

Effect of amendments. — D.C. Law 16-33 substituted “Attorney General” for “Corporation Counsel”.

Emergency legislation. — For temporary addition of subchapter, see note to § 1-608.51.

For temporary (90 day) amendment of section, see § 3012(h) of Fiscal Year 2006 Budget

Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 12-260. — For legislative history of D.C. Law 12-260, see Historical and Statutory Notes following § 1-604.04.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 1-617.17.

§ 1-608.62. Applicability.

The provisions of this subchapter shall apply on April 20, 1999, except as follows:

(1) Section 1-608.52 shall include attorneys employed by the District of Columbia Board of Education as part of the new Legal Service only as long as there is no Congressional statutory requirement that attorneys employed by the District of Columbia public schools be classified as Educational Service employees.

(2) Repealed.

(3) Within 90 days after April 20, 1999, the Mayor shall appoint to the new Legal Service any attorney who has been appointed to a position in the Office of the Corporation Counsel as of the effective date of this subchapter. Effective October 1, 1999, the appropriate personnel authority shall appoint to the new Legal Service any attorney who has been appointed to a position in any other subordinate agency or in any independent agency as of that date.

(4) The provisions of § 1-608.56 shall apply to individuals hired on or before December 31, 1979 as attorneys by the Mayor, an agency under the personnel authority of the Mayor, or any independent agency upon enactment of legislation by Congress that states the following:

“Notwithstanding any other law, the provisions contained in Title VIII-B of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, passed on second reading on December 15, 1998 (Enrolled version of Bill 12-660) shall apply to all covered attorneys first hired on or before December 31, 1979.”

(5) Effective October 1, 2005, any attorney who was employed by any subordinate agency other than the Office of the Attorney General as of October 20, 2005 shall become an attorney employed by the Office of the Attorney General for the District of Columbia. By December 31, 2005, the Mayor shall complete the personnel paperwork necessary to reflect these appointments.

(Mar. 3, 1979, D.C. Law 2-139, § 862, as added Apr. 20, 1999, D.C. Law 12-260, § 2(j), 46 DCR 1318; Oct. 26, 2001, D.C. Law 14-42, § 2(b), 48 DCR 7612; Oct.

20, 2005, D.C. Law 16-33, § 3012(i), 52 DCR 7503; Oct. 16, 2006, 120 Stat. 2037, Pub. L. 109-356, § 202(b).)

Prior Codifications. — 1981 Ed., § 1-609.62.

Effect of amendments. — D.C. Law 14-42 validated a previously made technical change in par. (4).

D.C. Law 16-33 added par. (5).

Pub. L. 109-356 repealed par. (2) which had read as follows: “(2) The provisions of this subchapter shall apply to attorneys employed by the Office of the Chief Financial Officer when the District of Columbia is no longer in a control period, as defined in § 47-393(4).”

Emergency legislation. — For temporary addition of subchapter, see note to § 1-608.51.

For temporary (90-day) amendment of section, see § 3(e) of the Legal Services Clarification and Technical Emergency Amendment Act of 1999 (D.C. Act 13-203, December 8, 1999, 46 DCR 10456).

For temporary (90-day) amendment of sec-

tion, see § 3(e) of the Legal Services Clarification and Technical Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-293, March 7, 2000, 47 DCR 2063).

For temporary (90 day) amendment of section, see § 2(b) of Technical Amendments Emergency Act of 2001 (D.C. Act 14-108, August 3, 2001, 48 DCR 7622).

For temporary (90 day) amendment of section, see § 3012(i) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 12-260. — For legislative history of D.C. Law 12-260, see Historical and Statutory Notes following § 1-604.04.

Legislative history of Law 14-42. — For Law 14-42, see notes following § 1-307.67.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 1-617.17.

§ 1-608.63. Payment of compensation to former subordinate agency attorneys.

Until the Legal Service budgets of the subordinate agencies are transferred to the budget of the Attorney General, the subordinate agencies that employed the attorneys who are transferred to the employment of the Office of the Attorney General pursuant to this chapter shall continue to be responsible for their compensation.

(Mar. 3, 1979, D.C. Law 2-139, § 863, as added Oct. 20, 2005, D.C. Law 16-33, § 3012(j), 52 DCR 7503.)

Emergency legislation. — For temporary (90 day) addition, see § 3012(j) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 1-617.17.

§ 1-608.64. Transfers.

By October 1, 2005, all subordinate agencies, other than the Office of the Attorney General, shall transfer to that Office all attorney and support staff employees, personal property, full-time equivalent position authority, assets, records, and all unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the furnishing of legal and other services by the attorneys who were employed by these agencies as of October 20, 2005.

(Mar. 3, 1979, D.C. Law 2-139, § 864, as added Oct. 20, 2005, D.C. Law 16-33, § 3012(j), 52 DCR 7503.)

Emergency legislation. — For temporary (90 day) addition, see § 3012(j) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 1-617.17.

§ 1-608.65. Budgeting.

(a) Notwithstanding any other law, during fiscal year 2006 the entire Legal Service budget for attorneys in the subordinate agencies, including personal services and non-personal services budgets associated with the pay and benefits of attorneys and their support staff, grants, as well as all related administrative overhead, supplies, materials, equipment and equipment rentals, and contractual services shall be under the management authority and control of the Attorney General.

(b) Notwithstanding any other law, during fiscal year 2007 and each fiscal year thereafter, the entire Legal Service budget for attorneys in the subordinate agencies shall continue to be under the management authority and control of the Attorney General, to the extent those budgets have not yet been included in the budget of the Office of the Attorney General.

(c) The Chief Financial Officer shall determine the exact budget amounts that are under the Attorney General's management authority in accordance with this section.

(Mar. 3, 1979, D.C. Law 2-139, § 865, as added Oct. 20, 2005, D.C. Law 16-33, § 3012(j), 52 DCR 7503.)

Emergency legislation. — For temporary (90 day) addition, see § 3012(j) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 1-617.17.

Part B

CERTIFICATE OF GOOD STANDING FILING REQUIREMENT.

§ 1-608.81. Certificate of Good Standing filing requirement.

(a) Except as provided by the rules for temporary waiver of this requirement, each attorney employed at the level of DS-13 or above, who is required to be a member of the D.C. Bar as a prerequisite of employment, by the Mayor, the Office of the Corporation Counsel, the Office of the Chief Financial Officer, the Board of Education, and by any independent agency, shall file with the District of Columbia Office of Personnel, a Certificate of Good Standing from the District of Columbia Bar Committee on Admissions, District of Columbia Court of Appeals, on an annual basis.

(b) The Director of Personnel shall publish, on an annual basis, a list of attorneys who have not met the filing requirements of subsection (a) of this section in the District of Columbia Register.

(c) The Director of Personnel shall promulgate rules and regulations concerning:

(1) The timing for filing the Certificate of Good Standing and associated procedures;

(2) The standards governing when a temporary waiver of the filing requirement may be granted by the personnel authority for the agency; and

(3) The procedures by which attorneys shall be notified of the filing requirement and whether they are in compliance with the requirement.

(d) The rules and regulations promulgated pursuant to this part shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the rules and regulations within the 45-day review period, the rules and regulations shall be deemed approved.

(e) The failure of an attorney covered by this subchapter to comply with the requirement of this part shall result in the forfeiture of employment.

(Mar. 3, 1979, D.C. Law 2-139, § 881, as added July 25, 2002, D.C. Law 14-182, § 2(c), 49 DCR 5129; Mar. 13, 2004, D.C. Law 15-105, § 32, 51 DCR 881.)

Cross references. — Elections, disclosure of interests, see § 1-1106.02.

Lobbying, “official in the executive branch” defined, see 1-1105.01.

Merit system, educational employees, coverage, see § 1-602.03.

Merit system, organization for personnel management, rules and regulations, see § 1-604.04.

Effect of amendments. — D.C. Law 15-105, in subsecs. (d) and (e), validated previously made technical corrections.

Legislative history of Law 14-182. — Law 14-182, the “Government Attorney Certificate

of Good Standing Filing Requirement Amendment Act of 2002”, was introduced in Council and assigned Bill No. 14-591, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on April 9, 2002, and May 7, 2002, respectively. Signed by the Mayor on May 29, 2002, it was assigned Act No. 14-377 and transmitted to both Houses of Congress for its review. D.C. Law 14-182 became effective on July 25, 2002.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 1-301.47.

Subchapter IX. Excepted Service.

§ 1-609.01. Creation of the Excepted Service; qualifications; appointment; exclusivity of service.

The qualifications for each Excepted Service position shall be developed and issued by the appropriate personnel authority in consultation with the Mayor. Each employee appointed in the Excepted Service (except those included in § 1-609.08) must be well qualified for the position to which he or she is appointed. Each personnel authority may fill positions in the Excepted Service as provided in this subchapter. Excepted Service employees may be hired noncompetitively. Persons appointed to the Excepted Service are not in the Career, Educational, Executive, Management Supervisory or Legal Service.

(Mar. 3, 1979, D.C. Law 2-139, § 901, 25 DCR 5740; Apr. 20, 1999, D.C. Law 12-260, § 2(d), 46 DCR 1318; Apr. 12, 2000, D.C. Law 13-91, § 110(j), 47 DCR 520; Mar. 14, 2012, D.C. Law 19-115, § 2(b), 59 DCR 461.)

Cross references. — Office of zoning, director serving as excepted service employee, see § 6-623.02.

Taxicab commission, membership, see § 50-305.

Section references. — This section is referred to in §§ 1-602.03, 1-609.02, 1-609.03, 1-618.03, 1-1105.01 and 1-1106.02.

Prior Codifications. — 1981 Ed., § 1-610.1.

1973 Ed., § 1-339.1.

Effect of amendments. — D.C. Law 13-91, in the fifth sentence, inserted “Executive.”

D.C. Law 19-115 substituted “must be well qualified” for “must meet the minimum standards prescribed”.

Emergency legislation. — For temporary

amendment of section, see § 2(d) of the Legal Service Establishment Emergency Amendment Act of 1998 (D.C. Act 12-620, January 22, 1999, 46 DCR 1343).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 12-260. — For legislative history of D.C. Law 12-260, see Historical and Statutory Notes following § 1-604.04.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-602.03.

Legislative history of Law 19-115. — For history of Law 19-115, see notes under § 1-608.01.

§ 1-609.02. Nature of positions in the Excepted Service and conversion rights.

(a) Each person holding an excepted appointment under the authority of this section and §§ 1-609.01 and 1-609.03 shall be an individual:

(1) Whose primary duties are of a policy determining, confidential, or policy advocacy nature; and

(2) Who either reports directly to the head of an agency or is placed in the Executive Office of the Mayor or the Office of the City Administrator.

(b) No person holding an Excepted Service appointment pursuant to § 1-609.03 or § 1-609.08 may be appointed to a position in the Career, Management Supervisory, or Educational Service during the period that begins 6 months before the Mayoral primary election and ends 3 months after the Mayoral general election; provided, that an Excepted Service appointee may compete for a position in the Career, Management Supervisory, or Educational Service during this time period; provided further, that, upon termination, a person with Career or Educational Service status may return, at the discretion of the terminating personnel authority, within 3 months of termination to a vacant position in such service for which he or she is qualified.

(c) All persons appointed to the Excepted Service shall be subject to a credit check and a criminal background check, pursuant to the procedures established in Chapter 15 of Title 4 [§ 4-1501.01 et seq.]. The suitability determination shall be made by the appointing personnel authority.

(Mar. 3, 1979, D.C. Law 2-139, § 902, 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(i), 27 DCR 2632; June 10, 1998, D.C. Law 12-124, § 101(g), 45 DCR 2464; Mar. 14, 2012, D.C. Law 19-115, § 2(c), 59 DCR 461.)

Section references. — This section is referred to in §§ 1-609.04, 1-609.52, 1-618.03, 1-1105.01, 1-1106.02, and 50-305.

Prior Codifications. — 1981 Ed., § 1-610.2.

1973 Ed., § 1-339.2.

Effect of amendments. — D.C. Law 19-115 rewrote the section, which formerly read:

“Each person holding an excepted appointment under the authority of this section and §§ 1-609.01 and 1-609.03 is intended to be an individual whose primary duties are of a policy determining, confidential, or policy advocacy character and who reports directly to the head of an agency. No person holding an Excepted Service appointment pursuant to §§ 1-609.03

or 1-609.08 may be appointed to a position in the Career, Management Supervisory, or Educational Service during the 6 month period immediately preceding a Mayoral election. However, upon termination, a person with Career or Educational Service status may retreat, at the discretion of the terminating personnel authority, within 3 months to a vacant position in such service for which he or she is qualified. The provisions of this section shall not apply to employees of the Council of the District of Columbia."

Emergency legislation. — For temporary (90 day) amendment of section, see § 1092(a) of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) amendment of sec-

tion, see § 1092(a) of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 3-81. — For legislative history of D.C. Law 3-81, see Historical and Statutory Notes following § 1-602.02.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Legislative history of Law 19-115. — For history of Law 19-115, see notes under § 1-608.01.

CASE NOTES

In general.

That District of Columbia law gave "excepted service" employees, who had no job tenure or protection, right to "freely express their opinions on all public issues" did not give excepted service employee legitimate claim of entitlement to continued employment. D.C. Code 1981, §§ 1-610.2, 1-610.5, 1-616.2(1). *Mulhall v. District of Columbia*, 747 F. Supp. 15, 1990 U.S. Dist. LEXIS 12175 (1990), affirmed without opinion by 946 F.2d 1565, 292 U.S. App. D.C. 85, 1991 U.S. App. LEXIS 33591 (1991).

Under District of Columbia law, status of temporary attorney for District as "excepted service" employee presumptively made him at-will employee. D.C. Code 1981, § 1-610.2. *Mulhall v. District of Columbia*, 747 F. Supp. 15, 1990 U.S. Dist. LEXIS 12175 (1990), affirmed without opinion by 946 F.2d 1565, 292 U.S. App. D.C. 85, 1991 U.S. App. LEXIS 33591 (1991).

§ 1-609.03. Number of Excepted Service employees; redelegation of authority to appoint; publication requirement.

(a) Under qualifications issued pursuant to § 1-609.01, each appropriate personnel authority may appoint persons to the Excepted Service as follows:

(1) The Mayor may appoint no more than 160 persons, no more than 2 of whom may be appointed or detailed to a single agency, other than the Executive Office of the Mayor or the Office of the City Administrator;

(2) The Members of the Council of the District of Columbia may appoint persons to their staffs, except those permanent technical and clerical employees appointed by the Secretary or General Counsel and those in the Legal Service;

(3) The Inspector General may appoint no more than 15 persons;

(4) The District of Columbia Auditor may appoint no more than 4 persons;

(5) The Chief of Police may appoint no more than 6 persons;

(6) The Chief of the Fire and Emergency Medical Services Department may appoint no more than 6 persons;

(7) The Board of Trustees of the University of the District of Columbia may appoint officers of the University, persons who report directly to the President, persons who head major units of the University, academic admin-

istrators, and persons in a confidential relationship to the foregoing, exclusive of those listed in the definition of the Educational Service; provided, that the total number of persons appointed by the University to the Excepted Service shall not exceed 20;

(8) The Criminal Justice Coordinating Council may appoint no more than 9 persons;

(9) The District of Columbia Sentencing and Criminal Code Revision Commission may appoint no more than 6 persons; and

(10) Each other personnel authority not expressly designated in paragraphs (1) through (9) of this subsection may appoint 2 persons.

(b) The authority to appoint persons to the Excepted Service, which is vested in subsection (a) of this section, may be redelegated, in whole or in part.

(c) Within 45 days of actual appointment and within 45 days of any change in such appointment, the names, position titles, and agency placements of all persons appointed to Excepted Service positions under the authority of this section shall be:

(1) Published in the District of Columbia Register; and

(2) Posted online on a website accessible to the public.

(d) At the discretion of the personnel authority, an individual appointed to the Excepted Service at grade level DS-11 or above pursuant to this section:

(1) May be paid in accordance with the pay schedule for the Management Supervisory Service as provided in § 1-609.56; and

(2) May be placed in any step of the appropriate grade of that schedule.

(e) The personnel authority may authorize performance incentives for exceptional service for individuals appointed pursuant to this section not to exceed 10% of the rate of basic pay in any year. Such exceptional service incentives may be paid only when the Excepted Service employee is bound by a performance contract that clearly identifies measurable goals and outcomes and the employee has exceeded contractual expectations in the year for which the incentive is paid.

(f) An individual appointed to the Excepted Service pursuant to this section or § 1-609.08 may be paid severance pay upon separation for non-disciplinary reasons according to the length of the individual's employment with the District government as follows:

Length of Employment Maximum Severance

Up to 6 months 2 weeks of the employee's basic pay

6 months to 1 year 4 weeks of the employee's basic pay

1 to 3 years 8 weeks of the employee's basic pay

More than 3 years 10 weeks of the employee's basic pay.

(g)(1) Pursuant to regulations as the Mayor may prescribe, the following expenses may be paid to an individual being interviewed for, or an appointee to, a hard-to-fill Excepted Service position at a DS-11 or above:

(A) Reasonable pre-employment travel expenses;

(B) Reasonable relocation expenses for the Excepted Service selectee or appointee and his or her immediate family if they relocate to the District of Columbia from outside the Greater Washington Metropolitan Area; and

(C) A reasonable temporary housing allowance, for a period not to

exceed 60 days, for the Excepted Service selectee or appointee and his or her immediate family.

(2) In no event shall the sum of pre-employment travel expenses, relocation expenses, and temporary housing allowance exceed \$10,000 or 10% of the appointee's salary, whichever is less.

(h) Within 90 days of September 10, 1999, and notwithstanding any other law or regulation, the Mayor shall submit to the Council for approval under the provisions of § 1-611.06, regulations establishing the Metropolitan Police Department Excepted Service Sworn Employees' Compensation System. Such regulations shall establish policies and procedures governing the compensation, promotion, transfer, and demotion of Metropolitan Police Department excepted service sworn employees appointed pursuant to section § 1-609.03(a)(2).

(Mar. 3, 1979, D.C. Law 2-139, § 903, 25 DCR 5740; Aug. 2, 1983, D.C. Law 5-24, § 12(b), 30 DCR 3341; Feb. 24, 1987, D.C. Law 6-177, § 3(i), 33 DCR 7241; Feb. 28, 1987, D.C. Law 6-205, § 2(b), 34 DCR 670; Aug. 1, 1996, D.C. Law 11-152, § 302(h), 43 DCR 2978; June 10, 1998, D.C. Law 12-124, § 101(h), 45 DCR 2464; Mar. 26, 1999, D.C. Law 12-175, § 302, 45 DCR 7193; Sept. 10, 1999, D.C. Law 13-27, § 2(a), 46 DCR 5315; Mar. 7, 2000, D.C. Law 13-52, § 2, 46 DCR 9911; Oct. 19, 2000, D.C. Law 13-172, § 2402(a), 47 DCR 6308; Oct. 3, 2001, D.C. Law 14-28, §§ 1002, 1507(a)(2), 3803(b), 48 DCR 6981; Sept. 30, 2004, D.C. Law 15-190, § 3(b), 51 DCR 6737; Apr. 7, 2006, D.C. Law 16-91, § 110(c), 52 DCR 10637; June 16, 2006, D.C. Law 16-126, § 3(b), 53 DCR 4709; Mar. 20, 2008, D.C. Law 17-122, § 2(b), 55 DCR 1506; Mar. 14, 2012, D.C. Law 19-115, § 2(d), 59 DCR 461.)

Section references. — This section is referred to in §§ 1-604.06, 1-609.02, 1-609.52, 1-609.58, 1-618.03, 1-1105.01, 1-1106.02, 5-129.31, and 50-305.

Prior Codifications. — 1981 Ed., § 1-610.3.

1973 Ed., § 1-339.3.

Effect of amendments. — D.C. Law 13-27 added subsec. (h).

D.C. Law 13-52, in subsec. (f), added "provided that, the individual has been a District government employee for at least one year prior to the separation; otherwise the separation pay shall not exceed 4 weeks of the agency head's basic pay".

D.C. Law 13-172, in subsec. (a), inserted par. (3A).

D.C. Law 14-28, in subsec. (a)(2), substituted a period for a semicolon at the end of the third sentence and inserted "In addition to the 220 Excepted Service positions, and notwithstanding any other law or regulation, the Chief of the Fire and Emergency Medical Services Department may designate up to 11 positions as Excepted Service policy positions, no more than 4 of which may be filled by sworn members;"; and added subssecs. (a)(6B) and (6C).

D.C. Law 15-190, in par. (6C) of subsec. (a), substituted "District of Columbia Sentencing Commission" for "Advisory Commission on Sentencing".

D.C. Law 16-91, in subsec. (a)(3), substituted "General Counsel and those in the Legal Service" for "General Counsel"; and repealed subsec. (a)(6), which had read as follows: "(6) The District of Columbia General Hospital Commission may appoint 10 persons;".

D.C. Law 16-126, in subsec. (a)(6C), substituted "Sentencing and Criminal Code Revision Commission" for "Sentencing Commission".

D.C. Law 17-122 rewrote subsec. (a)(4), which had read as follows: "(4) The District of Columbia Board of Education may appoint 25 persons;".

D.C. Law 19-115 rewrote subssecs. (a), (c), (f), and (g).

Temporary Amendment of Section. — For temporary (225 day) amendment of section and repeal of Law 11-156, see § 2 of Designation of Excepted Services Positions Temporary Amendment Act of 1996 (D.C. Law 11-263, April 25, 1997, law notification 44 DCR 2861).

For temporary (225 day) amendment of section, see § 2 of Designation of Excepted Ser-

vices Positions Temporary Amendment Act of 1998 (D.C. Law 12-148, September 18, 1997, law notification 45 DCR 6945).

For temporary (225 day) amendment of section, see § 2 of Fire/EMS Excepted Service Designation Temporary Amendment Act of 2001 (D.C. Law 13-290, April 27, 2001, law notification 48 DCR 4071).

Emergency legislation. — For the temporary repeal of the Excepted Services Designation Temporary Amendment Act of 1996 (D.C. Law 11-156, September 20, 1996), see § 3 of the Designation of Excepted Service Positions Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-50, March 31, 1997, 44 DCR 2199).

For temporary amendment of section, see § 2 of the Designation of Excepted Service Positions Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-50, March 31, 1997, 44 DCR 2199), and see § 2 of the Designation of Excepted Service Positions Emergency Amendment Act of 1998 (D.C. Act 12-348, May 6, 1998, 45 DCR 2999).

For temporary amendment of section, see § 2(a) of the Career and Excepted Services Nonunion Metropolitan Police Officers Salary Change and Excepted Service Positions Authorization Emergency Amendment Act of 1998 (D.C. Act 12-381, June 22, 1998, 45 DCR 4474).

For temporary amendment of section, see § 102 of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), and § 102 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

For the temporary repeal of § 2(a) of the Career and Excepted Services Nonunion Metropolitan Police Officers Salary Change and Excepted Service Positions Authorization Emergency Amendment Act of 1998 (Enrolled Bill 12-653), see § 103 of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), and § 103 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

For temporary (90-day) amendment of section, see § 102 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1999 (D.C. Act 13-41, March 31, 1999, 46 DCR 3446).

For temporary (90-day) amendment of section, see § 2402(a) of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see § 2402(a) of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

For temporary (90 day) amendment of section, see § 2 of the Fire/EMS Excepted Service Designation Emergency Amendment Act of 2000 (D.C. Act 13-584, January 31, 2001, 48 DCR 1927).

For temporary (90 day) amendment of section, see §§ 902, 1407(a)(2), and 3403(b) of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

For temporary (90 day) amendment of section, see § 3(b) of Advisory Commission on Sentencing Structured Sentencing System Pilot Program Emergency Amendment Act of 2004 (D.C. Act 15-437, May 21, 2004, 51 DCR 5957).

For temporary (90 day) amendment of section, see § 3(b) of Advisory Commission on Sentencing Structured Sentencing System Pilot Program Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-510, August 2, 2004, 51 DCR 8967).

For temporary (90 day) amendment of section, see § 2(b) of Public Education Personnel Reform Emergency Amendment Act of 2007 (D.C. Act 17-241, January 22, 2008, 55 DCR 983).

For temporary (90 day) amendment of section, see § 2 of Severance Pay Limitation Emergency Amendment Act of 2010 (D.C. Act 18-666, December 29, 2010, 58 DCR 93).

For temporary (90 day) amendment of section, see § 1092(b) of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) amendment of section, see § 1092(b) of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 5-24. — For legislative history of D.C. Law 5-24, see Historical and Statutory Notes following § 1-604.06.

Legislative history of Law 6-177. — For legislative history of D.C. Law 6-177, see Historical and Statutory Notes following § 1-601.02.

Legislative history of Law 6-205. — For legislative history of D.C. Law 6-205, see Historical and Statutory Notes following § 1-604.06.

Legislative history of Law 11-152. — For legislative history of D.C. Law 11-152, see Historical and Statutory Notes following § 1-602.02.

Legislative history of Law 11-156. — Law 11-156, the "Excepted Service Positions Designation Temporary Amendment Act of 1996," was introduced in Council and assigned Bill

No. 11-685. The Bill was adopted on first and second readings on May 7, 1996, and June 4, 1996, respectively. Signed by the Mayor on June 17, 1996, it was assigned Act No. 11-284 and transmitted to both Houses of Congress for its review. D.C. Law 11-156 became effective on September 20, 1996.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Legislative history of Law 12-175. — For legislative history of D.C. Law 12-175, see Historical and Statutory Notes following § 1-603.01.

Legislative history of Law 13-27. — Law 13-27, the “Metropolitan Police Department Excepted Service Sworn Employees’ Compensation System Amendment Act of 1999,” was introduced in Council and assigned Bill No. 13-115, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 13, 1999, and May 4, 1999, respectively. Signed by the Mayor on May 20, 1999, it was assigned Act No. 13-86 and transmitted to both Houses of Congress for its review. D.C. Law 13-172 became effective on September 10, 1999.

Legislative history of Law 13-52. — Law 13-52, the “Separation Pay Adjustment Amendment Act of 1999,” was introduced in Council and assigned Bill No. 13-235, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on July 6, 1999, and September 21, 1999, respectively. Signed by the Mayor on October 1, 1999, it was assigned Act No. 13-147 and transmitted to both Houses of Congress for its review. D.C. Law 13-52 became effective on March 7, 2000.

Legislative history of Law 13-172. — Law 13-172, the “Fiscal Year 2001 Budget Support

Act of 2000,” was introduced in Council and assigned Bill No. 13-679, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 18, 2000, and June 6, 2000, respectively. Signed by the Mayor on June 26, 2000, it was assigned Act No. 13-375 and transmitted to both Houses of Congress for its review. D.C. Law 13-172 became effective on October 19, 2000.

Legislative history of Law 14-28. — For Law 14-28, see notes following § 1-604.06.

Legislative history of Law 15-190. — For Law 15-190, see notes following § 1-604.06.

Legislative history of Law 16-91. — For Law 16-91, see notes following § 1-301.45.

Legislative history of Law 16-126. — For Law 16-126, see notes following § 1-604.06.

Legislative history of Law 17-122. — For Law 17-122, see notes following § 1-608.01a.

Legislative history of Law 19-115. — For history of Law 19-115, see notes under § 1-608.01.

Editor’s notes. — Repeal of § 3 of Law 6-177: Section 4(b) of D.C. Law 6-177 provided that the provisions of § 3 are repealed on the 1st day following the 36-month period after February 24, 1987.

Repeal of § 4(b) of Law 6-177: Section 3(b) of D.C. Law 8-74, effective March 15, 1990, provided that § 4(b) of D.C. Law 6-177 is repealed.

Applicability of § 101(h) of D.C. Law 12-124: Section 401(c) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(h), (l), (m), (n), (o)(2) through (5), (q), (r), (t), (u), (w), and (y) of the act shall apply as of October 21, 1998.

Applicability: Section 4 of D.C. Law 16-126 provided: “This act shall apply as of January 1, 2007.”

Section 4 of D.C. Law 19-115 provided: “Sec. 4. Applicability. Section 2(d) shall apply as of January 1, 2013.”

§ 1-609.04. Special appointments.

Special noncompetitive appointments may be made to positions provided under the authority of this section. Such positions are covered by the provisions of § 1-609.02 relating to the Excepted Service positions. The nature of the appointment must be made known to the employee prior to effecting the appointment.

(1) Individuals appointed to positions created under public employment programs established by law.

(2) Positions established under special employment programs of a transitional nature designed to provide training or job opportunities for rehabilitation purposes, including persons with disabilities, ex-offender or other disadvantaged groups.

(3) Positions filled by the appointment of a federal employee under the mobility provisions of the Intergovernmental Personnel Act of 1970 (84 Stat. 1901, Pub. L. 91-648).

(4) Positions established under federal grant funded programs having a limited or indefinite duration, provided state merit requirements are not applicable; provided, however, that this paragraph shall not apply to any employees of the Board of Education or of the Trustees of the University of the District of Columbia.

(5) Positions established to employ professional, scientific, or technical experts or consultants.

(6) Positions established under cooperative educational and study programs.

(Mar. 3, 1979, D.C. Law 2-139, § 904, 25 DCR 5740; Feb. 24, 1987, D.C. Law 6-177, § 3(j), 33 DCR 7241; Aug. 1, 1996, D.C. Law 11-152, § 302(i), 43 DCR 2978; Apr. 24, 2007, D.C. Law 16-305, § 3(f), 53 DCR 6198.)

Section references. — This section is referred to in §§ 1-602.04, 1-607.02, 1-609.05, 1-609.52, 1-636.02, and 50-305.

Prior Codifications. — 1981 Ed., § 1-610.4.

1973 Ed., § 1-339.4.

Effect of amendments. — D.C. Law 16-305, in par. (2), substituted “persons with disabilities” for “developmentally disabled or handicapped persons”.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 8-74. — Section 3(b) of D.C. Law 8-74, effective March 15, 1990, provided that § 4(b) of D.C. Law 6-177 is repealed.

Legislative history of Law 11-152. — For

legislative history of D.C. Law 11-152, see Historical and Statutory Notes following § 1-602.02.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 1-307.02.

Delegation of Authority. — Delegation of authority for Summer Youth Employment Program participants, see Mayor’s Order 83-131, May 24, 1983; Mayor’s Order 84-86, April 6, 1984.

Editor’s notes. — Repeal of § 3 of Law 6-177: Section 4(b) of D.C. Law 6-177 provided that the provisions of § 3 are repealed on the 1st day following the 36-month period after February 24, 1987.

Repeal of § 4(b) of Law 6-177: Section 3(b) of D.C. Law 8-74, effective March 15, 1990, provided that § 4(b) of D.C. Law 6-177 is repealed.

§ 1-609.05. Lack of job protection; procedural protection.

Employees in the Excepted Service (other than those appointed under the authority of § 1-609.04) do not have any job tenure or protection. After 1 year of average or above average performance as determined under subchapter XIII-A of this chapter, persons appointed under the authority of this subchapter shall be entitled to a notice of at least 15 days when termination is contemplated, which may state the reason therefor. The employee does not have any right to appeal the termination. All other provisions of this chapter apply to Excepted Service employees: Except, that persons employed by the Council of the District of Columbia by personnel authorities identified in § 1-604.06(b)(3)(B) may have their employment relationship terminated by the member or chairperson of a committee of the Council of the District of Columbia employing them without further review by way of grievance or adverse action administrative appeals.

(Mar. 3, 1979, D.C. Law 2-139, § 905, 25 DCR 5740; June 11, 1981, D.C. Law 4-7, § 4, 28 DCR 1672; Apr. 12, 2000, D.C. Law 13-91, § 103(k), 47 DCR 520; Oct. 19, 2002, D.C. Law 14-213, § 3(c), 49 DCR 8140.)

Section references. — This section is referred to in §§ 1-608.56, 1-609.52, and 50-305.

Prior Codifications. — 1981 Ed., § 1-610.5.

1973 Ed., § 1-339.5.

Effect of amendments. — D.C. Law 13-91, in the second sentence, substituted “subchapter XIV-A” for “subchapter XV”.

D.C. Law 14-213 substituted “termination is contemplated, which may state the reason therefor” for “termination of service prior to the expiration date of appointment is contemplated, explaining the reason therefor”.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 4-7. — For legislative history of D.C. Law 4-7, see Historical and Statutory Notes following § 1-611.16.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-602.03.

Legislative history of Law 14-213. — For Law 14-213, see notes following § 1-603.01.

CASE NOTES

ANALYSIS

In general.

Notice of termination.

Sufficiency of evidence.

In general.

District of Columbia’s Comprehensive Merit Personnel Act (CMPA) preempted tort claims by former Director of D.C. Office of Human Rights (OHR), an at-will employee and member of the Executive Service rather than the Excepted Service, against D.C. mayor for false light invasion of privacy, defamation, and intentional infliction of emotional distress. *Holman v. Williams*, 436 F.Supp.2d 68, 2006 U.S. Dist. LEXIS 44805 (2006).

That District of Columbia law gave “excepted service” employees, who had no job tenure or protection, right to “freely express their opinions on all public issues” did not give excepted service employee legitimate claim of entitlement to continued employment. *D.C. Code* 1981, §§ 1-610.2, 1-610.5, 1-616.2(1). *Mulhall v. District of Columbia*, 747 F. Supp. 15, 1990 U.S. Dist. LEXIS 12175 (1990), affirmed without opinion by 946 F.2d 1565, 292 U.S. App. D.C. 85, 1991 U.S. App. LEXIS 33591 (1991).

Notice of termination.

Under District of Columbia law, Director of

the District of Columbia (D.C.) Office of Human Rights (OHR) was member of the Executive Service, not the Excepted Service, and thus was not entitled to fifteen days notice of termination. *Holman v. Williams*, 436 F.Supp.2d 68, 2006 U.S. Dist. LEXIS 44805 (2006).

Sufficiency of evidence.

Decision of Office of Employee Appeals (OEA), which dismissed former public school employee’s appeal from his termination for lack of jurisdiction, on ground that employee had failed to prove that he was an Educational Service employee who had a right of appeal, was supported by substantial evidence, including testimony of school’s director of labor management and employee relations that there was no evidence that employee had been selected or appointed through a competitive process and that presence of computer printed “2” in box on form, thereby indicating that employee was in the Educational Service, was typographical error. *Johnson v. D.C. Office of Empl. Appeals*, 912 A.2d 1181, 2006 D.C. App. LEXIS 649 (2006).

§ 1-609.06. Domicile.

(a) An appointee to the Excepted Service shall be domiciled in the District of Columbia at the time of his or her appointment or within 180 days of their appointment and shall remain domiciled in the District of Columbia during the period of the appointment, to be considered a bona fide resident. The failure to become a District of Columbia domiciliary or to maintain a District of Columbia domicile shall result in the forfeiture of the position to which the person has been appointed.

(b) Domicile shall be proven by affirmative acts by an employee who is not a District of Columbia domiciliary and does not maintain a principal place of

residence in the District of Columbia at the time of his or her appointment with the District government.

(c)(1) Proof of domicile within the District of Columbia shall be established by meeting the requirements of subsection (d) of this section.

(2) An employee shall fulfill the requirements of subsection (d) of this section by filing a sworn affidavit with the Office of Personnel or other appropriate personnel authority, that affirms the employee has undertaken affirmative acts to comply with each requirement and, if a requirement is inapplicable, the reasons why the requirement does not apply.

(d) An Excepted Service appointee shall establish and certify that the District of Columbia is his or her domicile and principal place of residence as follows:

(1) When providing proof of District of Columbia domicile, the employee shall have the burden of proof of establishing that the District of Columbia is his or her principal place of residence.

(2) When the employee is not a domiciliary of the District of Columbia, and does not maintain his or her principal place of residence in the District of Columbia, domicile may be established by the employee providing evidence of the intent to change his or her domicile and acquiring a principal place of residence in the District of Columbia.

(3) Proof of the intent to change his or her domicile to the District of Columbia and acquire a principal place of residence in the District of Columbia shall include the following documents in addition to the requirements in section 305.3 of the District of Columbia Personnel Regulations:

(A) A copy of a change of address form filed with the United States Postal Service containing the address of the employee's principal place of residence in the District of Columbia;

(B)(i) A copy of an executed contract of sale for the real property that was the employee's principal place of residence at the time of accepting the appointment, if the employee owns a principal place of residence outside of the District of Columbia; or

(ii) A change in the public records of the state where the employee was domiciled to show that the residence outside of the District of Columbia is no longer the employee's principal place of residence;

(C) Utility bills, including electric, gas, telephone, cable, water, or other residency related bills associated with occupying real property in the District of Columbia, where the billing and mailing address are the same as the principal place of residence in the District of Columbia of the employee;

(D) A bank account in the District of Columbia in the name of the employee;

(E) District of Columbia and federal income tax returns that use the District of Columbia address which is the employee's principal place of residence;

(F) Professional dues statements mailed to the employee's principal place of residence in the District of Columbia;

(G) A sworn affidavit from the employee that the administration of the employee's estate is subject to District of Columbia probate and estate taxes;

(H) Credit card or brokerage account statements mailed to the employee's principal place of residence in the District of Columbia;

(I) Automobile, health, and life insurance contracts for the employee based upon the employee's principal place of residence in the District of Columbia;

(J) Mortgage statements for the employee's principal place of residence in the District of Columbia, or an executed lease for the employee's principal place of residence in the District of Columbia; and

(K) A sworn affidavit from the employee that the employee's income, from any source, is subject to District of Columbia withholding tax and taxation.

(e) A person hired in the Excepted Service prior to March 16, 1989, who was required to be or become a District of Columbia resident within 180 days of appointment and maintain that residency or forfeit employment, shall continue to be bound by this domicile requirement after March 16, 1989.

(f) Repealed.

(g)(1) Pursuant to rules and regulations which the personnel authority shall prescribe, the personnel authority may grant waivers of the domicile requirements in subsections (a) through (e) of this section for appointees to positions in the Excepted Service presenting exceptional circumstances or for appointees to hard to fill positions.

(2) The Mayor shall transmit the rules and regulations specifying how waivers shall be implemented for employees presenting exceptional circumstances or for employees appointed to hard to fill positions to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not act within the specified 45-day period, the rules and regulations shall be deemed approved.

(h) A person hired in the Excepted or Executive Service prior to October 1, 2002, who was required to be or become a District of Columbia resident within 180 days of appointment and maintain that residency or forfeit employment, shall continue to be bound by the terms of the residency requirement in effect at the time of hiring, and any waivers of the residency requirement previously granted to the person shall continue in effect. The requirements of D.C. Law 14-185 [§§ 1-603.01(5A), (8A), (10A), 1-609.06, and 1-610.59(a)], shall only apply to persons hired after October 1, 2002.

(i)(1) The Office of the Inspector General shall meet the definitions of "hard to fill" position or "exceptional circumstances" to receive a waiver of the District of Columbia's residency and domicile laws for new hires.

(2) For the purposes of this subsection, the term:

(A) "Hard to fill position" means a position so designated by the personnel authority on the basis of demonstrated recruitment and retention problems inherent in the position due to the uniqueness of the duties and responsibilities and the unusual combination of highly specialized qualification requirements for the position.

(B) "Exceptional circumstances" means conditions or facts that are uncommon, deviate from or do not conform to the norm, or are beyond willful control, which are presented to the personnel authority by the Inspector

General when hiring an individual to fill a position in the Excepted or Executive Services, and which shall be considered by the personnel authority in determining the reasonableness of granting a waiver of the domicile requirement pursuant to this section and § 1-610.59.

(3) The Office of Personnel shall have the authority to grant the Office of the Inspector General waivers of the domicile requirement for new positions or hires in the Office of the Inspector General when those positions or hires present exceptional circumstances or for appointees or hires in hard to fill positions.

(Mar. 3, 1979, D.C. Law 2-139, § 906, 25 DCR 5740; Mar. 16, 1989, D.C. Law 7-203, § 2(c), 36 DCR 450; Nov. 5, 1990, 104 Stat. 2237, Pub. L. 101-518, § 136(a); Mar. 27, 1997, 111 Stat. 14, Pub. L. 105-7, § 2; June 10, 1998, D.C. Law 12-124, § 101(i), 45 DCR 2464; July 24, 1998, D.C. Law 12-138, § 2(d), 45 DCR 2972; Oct. 21, 1998, 112 Stat. 2681-146, Pub. L. 105-277, § 153; Apr. 12, 2000, D.C. Law 13-91, § 158(a), 47 DCR 520; Oct. 1, 2002, D.C. Law 14-185, § 2(b), 49 DCR 6073; Oct. 1, 2002, D.C. Law 14-190, § 4002, 49 DCR 6968; Oct. 19, 2002, D.C. Law 14-213, § 43, 49 DCR 8140; Mar. 25, 2009, D.C. Law 17-353, § 314, 56 DCR 1117; Mar. 14, 2012, D.C. Law 19-115, § 2(e), 59 DCR 461.)

Section references. — This section is referred to in §§ 1-603.01, 1-609.52, 1-610.59, 2-1831.08, 2-1831.12, and 50-305.

Prior Codifications. — 1981 Ed., § 1-610.6.

1973 Ed., § 1-339.6.

Effect of amendments. — Pub. L. 105-277, Div. A, § 101(c) § 153, Oct. 21, 1998, 112 Stat. 2681-146, repealed D.C. Law 12-138, which had repealed subsec. (c) of this section.

D.C. Law 13-91, in subsec. (a), in the first sentence, substituted “subsection (c), subsection (d), or subsection (e) of this section” for “subsection (c) or subsection (d)”.

D.C. Law 14-185 rewrote the section.

D.C. Law 14-190 added subsec. (i).

D.C. Law 14-213, in subsec. (c)(2), substituted “Office of Personnel or other appropriate personnel authority” for “Office of Personnel, or its designee”; in subsec. (g)(2), substituted “The Mayor shall transmit” for “The Office of Personnel shall transmit”.

D.C. Law 17-353, in subsec. (f), inserted “prior to March 25, 2009” in the first sentence.

D.C. Law 19-115 repealed subsec. (f), which formerly read:

“(f) Subsections (a) through (e) of this section shall not apply to any person applying for, or accepting, a position in the Excepted Service as an attorney prior to March 25, 2009. The person shall be covered by the provisions of § 1-608.01(e).”

Emergency legislation. — For temporary (90 day) amendment of section, see § 3902 of Fiscal Year 2003 Budget Support Emergency

Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 7-203. — For legislative history of D.C. Law 7-203, see Historical and Statutory Notes following § 1-608.01.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Legislative history of Law 12-138. — For legislative history of D.C. Law 12-138, see Historical and Statutory Notes following § 1-608.01.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-602.03.

Legislative history of Law 14-185. — For Law 14-185, see notes following § 1-603.01.

Legislative history of Law 14-190. — For Law 14-190, see notes following § 1-301.131.

Legislative history of Law 14-213. — For Law 14-213, see notes following § 1-603.01.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 1-129.05.

Legislative history of Law 19-115. — For history of Law 19-115, see notes under § 1-608.01.

Short title. — District of Columbia Inspector General Improvement Act of 1997: Section 1 of Pub. L. 105-7, 111 Stat. 14, provided that the act may be cited as the “District of Columbia Inspector General Improvement Act of 1997.”

Short title of title XL of Law 14-190: Section 4001 of D.C. Law 14-190 provided that title XL of the act may be cited as the Office of Inspector General Domiciliary Amendment Act of 2002.

Effective date. — Section 136(b) of Public Law 101-518, the District of Columbia Appropriations Act, 1991, provided that the amendments made by § 136(a) shall take effect as if included in the enactment of the Residency

Preference Amendment Act of 1988 (D.C. Law 7-203, March 16, 1989).

Repeal of Law 12-138. — Section 153 of Pub. L. 105-277 repealed D.C. Law 12-138.

References in text. — Section 2(b) of D.C. Law 14-185, referred to in subsec. (h), is the Excepted and Executive Service Domicile Requirement Amendment Act of 2002, effective October 1, 2002 (49 DCR 6073).

§ 1-609.07. Transitional provisions.

Persons holding nontemporary appointments in the District of Columbia government, paid from appropriations made to the Office of the Mayor, may, on January 2, 1979, be reassigned to other offices or agencies of the District government. Persons holding appointments in the District of Columbia government, paid from appropriations made to the Council of the District of Columbia and classified as a GS-10 or less under § 5332 of Title 5 of the United States Code and whose position would not be in the Excepted Service under the provisions of this subchapter on January 1, 1980, shall be appointed to the Career Service created in subchapter VIII of this chapter, if such incumbent is found to possess the minimal qualifications for the position to which he or she is appointed.

(Mar. 3, 1979, D.C. Law 2-139, § 907, 25 DCR 5740.)

Section references. — This section is referred to in §§ 1-609.52, 1-636.02, and 50-305.

Prior Codifications. — 1981 Ed., § 1-610.7.

1973 Ed., § 1-339.7.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

CASE NOTES

In general.

Director of Legislative Services Division of Council of District of Columbia, who occupied DS-13 position, was not member of career service who could be discharged only for cause. D.C. Code 1981, § 1-602.4(c) Council of District

of Columbia v. Clay, 683 A.2d 1385, 1996 D.C. App. LEXIS 229 (1996), writ of certiorari denied by 520 U.S. 1169, 117 S. Ct. 1434, 137 L. Ed. 2d 542, 1997 U.S. LEXIS 2277, 65 U.S.L.W. 3692 (1997).

§ 1-609.08. Statutory officeholders.

The following employees of the District shall be deemed to be in the Excepted Service. Their terms of office shall be at the pleasure of the appointing authority, or as provided by statute for a term of years, subject to removal for cause as may be provided in their appointing statute:

- (1) City Administrator;
- (2) Repealed;
- (3) The Director of Campaign Finance, District of Columbia Board of Elections and Ethics;
- (4) Repealed;
- (5) Auditor of the District of Columbia;
- (6) The Chairman and members of the Public Service Commission;

- (7) The Chairman and members of the Board of Parole;
- (8) Executive Director of the Public Employee Relations Board;
- (9) Secretary to the Council;
- (10) Repealed;
- (11) Repealed;
- (12) Executive Director of the Office of Employee Appeals;
- (13) The Executive Director and Deputy Director of the District of Columbia Lottery and Charitable Games Control Board.
- (14) Budget Director to the Council;
- (15) The Chief Administrative Law Judge, the Administrative Law Judges, and the Executive Director of the Office of Administrative Hearings; and
- (16) The Chief Tenant Advocate of the Office of the Tenant Advocate.

(Mar. 3, 1979, D.C. Law 2-139, § 908, 25 DCR 5740; Aug. 2, 1983, D.C. Law 5-24, § 12(c), 30 DCR 3341; Feb. 28, 1987, D.C. Law 6-205, § 2(c), 34 DCR 670; May 15, 1990, D.C. Law 8-127, § 2(f), 37 DCR 2093; June 10, 1998, D.C. Law 12-124, § 101(j), 45 DCR 2464; Apr. 20, 1999, D.C. Law 12-260, § 2(e), 46 DCR 1318; Apr. 12, 2000, D.C. Law 13-91, § 103(l), 47 DCR 520; Mar. 6, 2002, D.C. Law 14-76, § 23(a), 48 DCR 11442; Oct. 20, 2005, D.C. Law 16-33, § 2069, 52 DCR 7503.)

Cross references. — Elections, disclosure of interests, see § 1-1106.02.

Lobbying, “official in the executive branch” defined, see § 1-1105.01.

Lottery and charitable games control board, Executive Director and Deputy Director, see § 3-1303.

Section references. — This section is referred to in §§ 1-609.01, 1-609.02, 1-609.03, 1-609.52, 1-618.03, 2-1831.04, 2-1831.08, 2-1831.12, 42-3531.06, and 50-305.

Prior Codifications. — 1981 Ed., § 1-610.8.

1973 Ed., § 1-339.8.

Effect of amendments. — D.C. Law 13-91 repealed pars. (4) and (10), which read:

“(4) People’s Counsel of the District of Columbia;”

“(10) General Counsel to the Council;” and in par. (13), added “and”.

D.C. Law 14-76 added par. (15).

D.C. Law 16-33, in subsec. (a), substituted a semicolon for “; and” at the end of the paragraph; in subsec. (b), substituted “; and” for period at the end of the paragraph; and added subsec. (c).

Emergency legislation. — For temporary amendment of section, see § 2(e) of the Legal Service Establishment Emergency Amendment Act of 1998 (D.C. Act 12-620, January 22, 1999, 46 DCR 1343).

For temporary (90-day) amendment of section, see § 2(b) of the Legal Services Clarification and Technical Emergency Amendment Act

of 1999 (D.C. Act 13-203, December 8, 1999, 46 DCR 10456).

For temporary (90-day) amendment of section, see § 2(b) of the Legal Services Clarification and Technical Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-293, March 7, 2000, 47 DCR 2063).

For temporary (90 day) amendment of section, see § 2069 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 5-24. — For legislative history of D.C. Law 5-24, see Historical and Statutory Notes following § 1-604.06.

Legislative history of Law 6-205. — For legislative history of D.C. Law 6-205, see Historical and Statutory Notes following § 1-604.06.

Legislative history of Law 8-127. — For legislative history of D.C. Law 8-127, see Historical and Statutory Notes following § 1-606.06.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Legislative history of Law 12-260. — For legislative history of D.C. Law 12-260, see Historical and Statutory Notes following § 1-604.04.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-602.03.

Legislative history of Law 14-76. — Law 14-76, the “Office of Administrative Hearings Establishment Act of 2001”, was introduced in Council and assigned Bill No. 14-208, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second read-

ings on October 2, 2001, and November 6, 2001, respectively. Signed by the Mayor on November 29, 2001, it was assigned Act No. 14-196 and transmitted to both Houses of Congress for its review. D.C. Law 14-76 became effective on March 6, 2002.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 1-617.17.

§ 1-609.09. Appointment of attorneys. [Repealed].

Repealed.

(Mar. 3, 1979, D.C. Law 2-139, § 909, as added Aug. 7, 1980, D.C. Law 3-81, § 2(j), 27 DCR 2632; Apr. 20, 1999, D.C. Law 12-260, § 2 (f), 46 DCR 1318.)

Prior Codifications. — 1981 Ed., § 1-610.9.

Emergency legislation. — For temporary repeal of section, see § 2(f) of the Legal Service Establishment Emergency Amendment Act of 1998 (D.C. Act 12-620, January 22, 1999, 46 DCR 1343).

Legislative history of Law 12-260. — For legislative history of D.C. Law 12-260, see Historical and Statutory Notes following § 1-604.04.

Subchapter IX-A. Management Supervisory Service.

§ 1-609.51. Establishment.

There is established within the District government the Management Supervisory Service to ensure that each agency has the highest quality managers and supervisors who are responsive to the needs of the government. Persons appointed to the Management Supervisory Service are not in the Career, Educational, Excepted, Executive, or Legal Service.

(Mar. 3, 1979, D.C. Law 2-139, § 951, as added June 10, 1998, D.C. Law 12-124, § 101(k), 45 DCR 2464; Apr. 20, 1999, D.C. Law 12-260, § 2(g), 46 DCR 1318.)

Prior Codifications. — 1981 Ed., § 1-610.51.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(a) of Management Supervisory Service Temporary Amendment Act of 1999 (D.C. Law 13-70, October 25, 1999, law notification 47 DCR 2627).

Emergency legislation. — For temporary amendment of section, see § 2(g) of the Legal Service Establishment Emergency Amendment Act of 1998 (D.C. Act 12-620, January 22, 1999, 46 DCR 1343).

For temporary (90-day) amendment of section, see § 2(a) of the Management Supervisory Service Emergency Amendment Act of 1999 (D.C. Act 13-153, October 22, 1999, 46 DCR 8866).

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see His-

torical and Statutory Notes following § 1-603.01.

Legislative history of Law 12-260. — For legislative history of D.C. Law 12-260, see Historical and Statutory Notes following § 1-604.04.

Construction of Law 12-124. — Section 301 of D.C. Law 12-124 provided that nothing in the act shall be construed as superseding the provisions of the National Capital Revitalization and Self-Government Improvement Act of 1997, approved August 5, 1997 (Public Law 105-33; 111 Stat. 712), except that § 47-395.04(b)(3) is expressly superseded. Further, nothing in the act shall be construed as superseding the provisions of § 47-391.01 et seq. or of § 164 of the District of Columbia Appropriations Act, 1998, approved November 19, 1997 (Public Law 105-100; 111 Stat. 2160).

Editor's notes. — Applicability of § 101(k)

of D.C. Law 12-124: Section 401(a) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(d), (k), (p), (s), and (x) of the act shall apply upon the enactment of legislation by the United States Congress that states the following: "Notwithstanding any other law, section 101(d), (k), (p), (s), and (x) of the Omnibus Personnel Reform Act of 1998,

effective June 10, 1998 (D.C. Law 12-124; 45 DCR 2464) are enacted into law." Section 134 of Title I of Division C of Pub. L. 105-277, 112 Stat. 2681-596, provided that "Notwithstanding any other law, sections 101(d), (k), (p), (s), and (x) of the Omnibus Personnel Reform Amendment Act of 1998, D.C. Law 12-124, effective June 11, 1998, are enacted into law."

CASE NOTES

In general.

While the Comprehensive Merit Personnel Act (CMPA) and its implementing regulations provide procedural protections to Career Service employees who are subject to adverse employment actions, such as notice and hearing

rights and the right to be terminated only for cause, Management Supervisory Service (MSS) employees are statutorily excluded from the Career Service and, thus, cannot claim those protections. *Grant v. District of Columbia*, 908 A.2d 1173, 2006 D.C. App. LEXIS 543 (2006).

§ 1-609.52. Composition.

(a) Each individual (except for employees appointed pursuant to §§ 1-609.01 to 1-609.08 or subchapters VIII-A, VIII-B, or X-A of this chapter, employees of the Board of Education, employees of the Board of Trustees of the University of the District of Columbia, and uniformed members of the Metropolitan Police Department or the D.C. Fire and Emergency Medical Services Department) who meets the definition of "management employee" pursuant to § 1-614.11(5) shall be in the Management Supervisory Service.

(b) Consistent with the provisions of subchapter XVII of this chapter, any individual occupying a position included in a recognized collective bargaining unit shall not be included in the Management Supervisory Service.

(Mar. 3, 1979, D.C. Law 2-139, § 952, as added June 10, 1998, D.C. Law 12-124, § 101(k), 45 DCR 2464; Apr. 20, 1999, D.C. Law 12-260, § 2(h), 46 DCR 1318; Apr. 12, 2000, D.C. Law 13-91, § 108(a), 47 DCR 520; June 24, 2000, D.C. Law 13-132, § 2(a), 47 DCR 2694.)

Prior Codifications. — 1981 Ed., § 1-610.52.

Effect of amendments. — D.C. Law 13-91 substituted "XI-A of this chapter" for "XI of this chapter".

D.C. Law 13-132 designated the existing text as subsec. (a), and added subsec. (b).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(a) of Management Supervisory Service Exclusion Temporary Amendment Act of 1999 (D.C. Law 13-86, April 12, 2000, law notification 47 DCR 2837).

Emergency legislation. — For temporary amendment of section, see § 2(h) of the Legal Service Establishment Emergency Amendment Act of 1998 (D.C. Act 12-620, January 22, 1999, 46 DCR 1343).

For temporary (90-day) amendment of section, see § 2(a) of the Management Supervisory Service Emergency Amendment Act of 1999

(the 2nd) (D.C. Act 13-197, December 1, 1999, 46 DCR 10442).

For temporary (90-day) amendment of section, see § 2(a) of the Management Supervisory Service Exclusion Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-283, March 7, 2000, 47 DCR 2029).

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Legislative history of Law 12-260. — For legislative history of D.C. Law 12-260, see Historical and Statutory Notes following § 1-604.04.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-602.03.

Legislative history of Law 13-132. — Law 13-132, the "Management Supervisory Service Exclusion Amendment Act of 2000," was introduced in Council and assigned Bill No. 13-441,

which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on February 1, 2000, and March 7, 2000, respectively. Signed by the Mayor on March 22, 2000, it was assigned Act No. 13-302 and transmitted to both Houses of

Congress for its review. D.C. Law 13-132 became effective on June 24, 2000.

Editor's notes. — Applicability of § 101(k) of D.C. Law 12-124: See Historical and Statutory Notes following § 1-609.51.

§ 1-609.53. Competitive appointments.

Appointments by the personnel authority shall be made on the basis of merit from among the highest qualified applicants, based on specific job requirements. Examining procedures shall be designed to achieve the maximum objectivity, reliability, and validity.

(Mar. 3, 1979, D.C. Law 2-139, § 953, as added June 10, 1998, D.C. Law 12-124, § 101(k), 45 DCR 2464.)

Prior Codifications. — 1981 Ed., § 1-610.53.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Editor's notes. — Applicability of § 101(k) of D.C. Law 12-124: See Historical and Statutory Notes following § 1-609.51.

§ 1-609.54. Employment-at-will.

(a) An appointment to a position in the Management Supervisory Service shall be an at-will appointment. Management Supervisory Service employees shall be given a 15-day notice prior to termination. Upon termination, a person with Career or Educational Service status, or with Excepted Service status due to appointment as an attorney pursuant to § 1-609.09, may retreat, at the discretion of the personnel authority, within 3 months of the effective date of the termination, to a vacant position within the agency to which he or she was promoted for which he or she is qualified.

(b) An individual appointed to the Management Supervisory Service pursuant to this section may be paid severance pay upon separation for non-disciplinary reasons according to the length of the individual's employment with the District government as follows:

<u>Length of Employment</u>	<u>Maximum Severance</u>
Up to 6 months	2 weeks of the employee's basic pay
6 months to 1 year	4 weeks of the employee's basic pay
1 to 3 years	8 weeks of the employee's basic pay
More than 3 years	10 weeks of the employee's basic pay.

(Mar. 3, 1979, D.C. Law 2-139, § 954, as added June 10, 1998, D.C. Law 12-124, § 101(k), 45 DCR 2464; Mar. 14, 2012, D.C. Law 19-115, § 2(f), 59 DCR 461.)

Prior Codifications. — 1981 Ed., § 1-610.54.

Effect of amendments. — D.C. Law 19-115 repealed subsec. (b), which formerly read:

“(b) Employees appointed to the Manage-

ment Supervisory Service shall be given severance pay in accordance with subchapter XI of this chapter upon separation for non-disciplinary reasons.”

Legislative history of Law 12-124. — For

legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Legislative history of Law 19-115. — For history of Law 19-115, see notes under § 1-608.01.

Editor's notes. — Applicability of § 101(k) of D.C. Law 12-124: See Historical and Statutory Notes following § 1-609.51.

CASE NOTES

ANALYSIS

Hearing.

In General.

Termination of employment.

Hearing.

District of Columbia employee who held an at-will appointment had no property interest in his continued employment, and thus was not entitled to a hearing prior to his termination, as there was no objective basis for believing that he would continue to be employed indefinitely, and employee was not protected under District of Columbia law protecting career service employees. *Ekwem v. Fenty*, 666 F.Supp.2d 71, 2009 U.S. Dist. LEXIS 100670 (2009).

In General.

Employee of the District of Columbia's Alcoholic Beverage Regulation Administration (ABRA) was an at-will employee with no property interest in continued employment protected by the Fourteenth Amendment, despite claim that he had a legitimate expectation of continued employment arising from personnel regulations; those regulations did not establish

any extra procedural protections for District employees, but only set forth additional categories of conduct for which employees could face disciplinary action. *Evans v. District of Columbia*, 391 F.Supp.2d 160, 2005 U.S. Dist. LEXIS 21088 (2005).

Termination of employment.

Terminated supervisor's claim against District of Columbia Department of Human Services (DHS) seeking severance pay in connection with her termination was barred by District of Columbia regulation, as her claim was premised on a statute which provided that employees appointed to the management supervisory service were entitled to severance pay in accordance with a compensation system developed by the mayor, applicable compensation system regulations precluded an employee from receiving severance pay if the employee opted to retire and receive a retirement annuity, and when supervisor was terminated she fulfilled the requirements for an immediate retirement annuity. *Carter v. District of Columbia*, 980 A.2d 1217, 2009 D.C. App. LEXIS 472 (2009).

§ 1-609.55. Management Supervisory Service skills maintenance and enhancement.

Management Supervisory Service employees shall be required to maintain and enhance their management and supervisory skills.

(Mar. 3, 1979, D.C. Law 2-139, § 955, as added June 10, 1998, D.C. Law 12-124, § 101(k), 45 DCR 2464.)

Prior Codifications. — 1981 Ed., § 1-610.55.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Editor's notes. — Applicability of § 101(k) of D.C. Law 12-124: See Historical and Statutory Notes following § 1-609.51.

§ 1-609.56. Pay for Management Supervisory Service.

A pay schedule shall be developed by the Mayor following a classification and compensation study for the Management Supervisory Service.

(Mar. 3, 1979, D.C. Law 2-139, § 956, as added June 10, 1998, D.C. Law 12-124, § 101(k), 45 DCR 2464.)

Prior Codifications. — 1981 Ed., § 1-610.56.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(b) of Management Supervisory Service Temporary Amendment Act of 1999 (D.C. Law 13-70, October 25, 1999, law notification 47 DCR 2627).

Emergency legislation. — For temporary (90-day) amendment of section, see § 2(b) of

the Management Supervisory Service Emergency Amendment Act of 1999 (D.C. Act 13-153, October 22, 1999, 46 DCR 8866).

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Editor's notes. — Applicability of § 101(k) of D.C. Law 12-124: See Historical and Statutory Notes following § 1-609.51.

§ 1-609.57. Residency preference.

The provisions of § 1-608.01(e)(1), (2), (3), (5), (6), and (7) shall apply to employment in the Management Supervisory Service.

(Mar. 3, 1979, D.C. Law 2-139, § 957, as added June 10, 1998, D.C. Law 12-124, § 101(k), 45 DCR 2464.)

Prior Codifications. — 1981 Ed., § 1-610.57.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Editor's notes. — Applicability of § 101(k) of D.C. Law 12-124: See Historical and Statutory Notes following § 1-609.51.

§ 1-609.58. Transition provisions.

(a) Persons currently holding appointments to positions in the Career Service who meet the definition of “management employee” as defined in § 1-614.11(5) shall be appointed to the Management Supervisory Service unless the employee declines the appointment. Persons declining appointment shall have priority for appointment to the Career Service if a vacant position for which they qualify is available within the agency and is acceptable to the employee. If no such vacant position is available, a 30-day separation notice shall be issued to the employee, who shall be entitled to severance pay in the manner provided by § 1-624.09.

(b) A person currently holding an appointment to a position in the Excepted Service pursuant to § 1-609.03(a) who meets the definition of “management employee” as defined in § 1-614.11(5) may, at the discretion of the personnel authority, be appointed noncompetitively to the Management Supervisory Service unless the employee declines the appointment. A person declining appointment shall be entitled to a written 15-day separation notice and shall be paid separation pay in accordance with section § 1-609.03(f).

(Mar. 3, 1979, D.C. Law 2-139, § 958, as added June 10, 1998, D.C. Law 12-124, § 101(k), 45 DCR 2464; June 24, 2000, D.C. Law 13-132, § 2(b), 47 DCR 2694.)

Prior Codifications. — 1981 Ed., § 1-610.58.

Effect of amendments. — D.C. Law 13-132 designated the existing text as subsec. (a); in subsec. (a) as so designated, in the last sen-

tence, added “, who shall be entitled to severance pay in the manner provided by section 2407”; and added subsec. (b).

Temporary Amendment of Section. — For temporary (225 day) amendment of section,

see § 2(b) of Management Supervisory Service Exclusion Temporary Amendment Act of 1999 (D.C. Law 13-86, April 12, 2000, law notification 47 DCR 2837).

Emergency legislation. — For temporary (90-day) amendment of section, see § 2(b) of the Management Supervisory Service Emergency Amendment Act of 1999 (the 2nd) (D.C. Act 13-197, December 1, 1999, 46 DCR 10442).

For temporary (90-day) amendment of section, see § 2(b) of the Management Supervisory Service Exclusion Congressional Review Emer-

gency Amendment Act of 2000 (D.C. Act 13-283, March 7, 2000, 47 DCR 2029).

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Legislative history of Law 13-132. — For Law 13-132, see notes following § 1-609.52.

Editor's notes. — Applicability of § 101(k) of D.C. Law 12-124: See Historical and Statutory Notes following § 1-609.51.

Subchapter X. Executive Service [Repealed].

§ 1-610.01. Creation of Executive Service. [Repealed].

Repealed.

(Mar. 3, 1979, D.C. Law 2-139, § 1001, 25 DCR 5740; Mar. 16, 1989, D.C. Law 7-203, § 2(d), 36 DCR 450; Apr. 12, 1997, D.C. Law 11-259, § 304(b), 44 DCR 1423; June 10, 1998, D.C. Law 12-124, § 101(l), 45 DCR 2464; Apr. 12, 2000, D.C. Law 13-91, § 158(b), 47 DCR 520.)

Cross references. — Procurement, criteria for Council review of multiyear contracts and contracts in excess of \$1 million, see § 2-301.05a.

Prior Codifications. — 1981 Ed., § 1-611.1.

1973 Ed., § 1-340.1.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-602.03.

Editor's notes. — Applicability of § 101(l) of D.C. Law 12-124: Section 401(c) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(h), (l), (m), (n), (o)(2) through (5), (q), (r), (t), (u), (w), and (y) of the act shall apply as of October 21, 1998.

§ 1-610.02. Incumbents. [Repealed].

Repealed.

(Mar. 3, 1979, D.C. Law 2-139, § 1002, 25 DCR 5740; Apr. 12, 1997, D.C. Law 11-259, § 304, 44 DCR 1423; Apr. 12, 2000, D.C. Law 13-91, § 158(b), 47 DCR 520.)

Prior Codifications. — 1981 Ed., § 1-611.2.

1973 Ed., § 1-340.2.

Legislative history of Law 11-259. — For legislative history of D.C. Law 11-259, see His-

torical and Statutory Notes following § 1-601.01.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-602.03.

Subchapter X-A. Executive Service.

§ 1-610.51. Policy; scope.

(a) An Executive Service is established to ensure that the executive management of the District of Columbia government is responsive to the needs of

the citizens and the goals of the government. Persons serving in the Executive Service shall assist the Mayor in advancing program responsibilities of the District government.

(b) The Mayor shall nominate persons to serve as subordinate agency heads in the Executive Service pursuant to § 1-523.01. Individuals appointed to the Executive Service, other than the Chief Procurement Officer, shall serve at the pleasure of the Mayor.

(c) The compensation and benefits system for the Executive Service is designed to attract and retain the highest caliber public administrators, who shall be accountable for the effective and efficient management of subordinate agencies.

(d) Except as otherwise provided by law, the provisions of this subchapter shall apply to persons appointed by the Mayor to serve as Chief of Police and Fire Chief.

(Mar. 3, 1979, D.C. Law 2-139, § 1051, as added June 10, 1998, D.C. Law 12-124, § 101(m), 45 DCR 2464; May 13, 2008, D.C. Law 17-154, § 2, 55 DCR 3678.)

Prior Codifications. — 1981 Ed., § 1-611.51.

Effect of amendments. — D.C. Law 17-154, in the section name line, inserted “; policy”; and added subsec. (d).

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Legislative history of Law 17-154. — Law 17-154 the “Omnibus Executive Service System, Police and Fire Systems, and Retirement Modifications for Chief of Police Cathy L. Lanier and Fire Chief Dennis L. Rubin Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-249 which was referred to the Committee on Public Safety and Judiciary. The Bill was adopted on first and second readings on February 5, 2008, and March 4, 2008, respectively. Signed by the Mayor on March 19, 2008, it was assigned Act No. 17-326 and transmitted to both Houses of

Congress for its review. D.C. Law 17-154 became effective on May 13, 2008.

Construction of Law 12-124. — Section 301 of D.C. Law 12-124 provided that nothing in the act shall be construed as superseding the provisions of the National Capital Revitalization and Self-Government Improvement Act of 1997, approved August 5, 1997 (Public Law 105-33; 111 Stat. 712), except that § 47-395.4(b)(3) is expressly superseded. Further, nothing in the act shall be construed as superseding the provisions of § 47-391.1 et seq. or of § 164 of the District of Columbia Appropriations Act, 1998, approved November 19, 1997 (Public Law 105-100; 111 Stat. 2160).

Editor’s notes. — Applicability of § 101(m) of D.C. Law 12-124: Section 401(c) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(h), (l), (m), (n), (o)(2) through (5), (q), (r), (t), (u), (w), and (y) of the act shall apply as of October 21, 1998.

CASE NOTES

ANALYSIS

In general.
Jurisdiction.

In general.

Notwithstanding employment contract signed by District of Columbia Public Schools (DCPS) employee that stated that the tenure of contract was one year from the commencement date, employee was hired, as indicated in vacancy notice, to a position in the “Executive Service,” in which, by statute, he served at the pleasure of the mayor. *Winder v. Erste*, 511

F.Supp.2d 160, 2007 U.S. Dist. LEXIS 72655 (2007), affirmed in part and reversed in part by, remanded by 566 F.3d 209, 386 U.S. App. D.C. 26, 2009 U.S. App. LEXIS 10296, 92 Empl. Prac. Dec. (CCH) P43562, 29 I.E.R. Cas. (BNA) 143 (2009).

Former mayor of the District of Columbia, in his individual capacity, was absolutely immune from tort liability for wrongful discharge of Director of the District of Columbia (D.C.) Office of Human Rights (OHR); e decision to fire such an agency head was a matter clearly committed by law to Mayor’s control or super-

vision. *Holman v. Williams*, 436 F.Supp.2d 68, 2006 U.S. Dist. LEXIS 44805 (2006).

Jurisdiction.

As Office of Employee Appeals (OEA) concluded that it lacked jurisdiction over appeal filed by former employee of District of Columbia Public Schools (DCPS), and stated that employee had no recourse under the D.C. Comprehensive Merit Personnel Act (CMPA), employ-

ee's claim that DCPS breached employment contract by denying him sick and annual leave, compensatory leave, and pension contributions would be reinstated. *Winder v. Erste*, 511 F.Supp.2d 160, 2007 U.S. Dist. LEXIS 72655 (2007), affirmed in part and reversed in part by, remanded by 566 F.3d 209, 386 U.S. App. D.C. 26, 2009 U.S. App. LEXIS 10296, 92 Empl. Prac. Dec. (CCH) P43562, 29 I.E.R. Cas. (BNA) 143 (2009).

§ 1-610.52. Executive Service pay schedule.

(a) The Executive Schedule ("DX Schedule"), shall be divided into 5 pay levels and shall be the basic pay schedule for subordinate agency head positions.

(b)(1) The Mayor shall designate the appropriate pay level within the range of the DX Schedule for each subordinate agency head position.

(2) Notwithstanding paragraph (1) of this subsection, the Council approves the existing level of compensation for the positions of the Chief of the Metropolitan Police Department Cathy Lanier (\$253,817), the Chief of the Fire and Emergency Medical Services Department Kenneth Ellerbe (\$187,302), the Chancellor of the District of Columbia Public Schools Kaya Henderson (\$275,000), and the Chief Medical Examiner Dr. Marie Pierre-Louis (\$185,000).

(3) The levels of compensation as provided in paragraph (2) of this subsection shall be the total annual salary amount that the present officeholder may receive. The officeholder may not receive longevity pay, bonus pay, including performance bonus pay, retention pay, per annum percentage increases for cost-of-living purposes or due to any collective bargaining activity within the officeholder's respective agency or department, or any equivalent financial incentives or salary enhancements; provided, that the Chancellor may be paid an additional income allowance of \$12,500, for School Year 2010, in order for the parties to meet the terms and conditions of the November 1, 2010 agreement.

(4) The existing levels of compensation for the positions in paragraph (2) of this subsection shall not be used as the basis for determining the salary of an officeholder in the position of Chief of Police, Fire Chief, Chief Medical Examiner, Chancellor of the District of Columbia Public Schools, who takes office after February 24, 2012. Each position in paragraph (2) of this subsection shall be subject to compensation within the limits of the DX Schedule, except as provided by this chapter.

(c) Each level shall have a minimum and maximum salary range established by the Mayor, subject to Council review and approval by resolution. Initial salary ranges shall be submitted by the Mayor to the Council for a 60-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove of the proposed changes to the salary ranges by resolution within this 60-day period, the proposed salary ranges shall be deemed approved.

(d) Any subsequent changes to the salary ranges established pursuant to subsection (c) of this section shall be submitted by the Mayor to the Council for

a 15-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove of the proposed changes to the salary ranges by resolution within this 15-day period, the proposed salary ranges shall be deemed approved.

(e) Initial salary ranges and any subsequent changes to the salary ranges shall become effective upon approval and shall be published in the District of Columbia Register for notice purposes within 45 days of their approval.

(Mar. 3, 1979, D.C. Law 2-139, § 1052, as added June 10, 1998, D.C. Law 12-124, § 101(m), 45 DCR 2464; Feb. 24, 2012, D.C. Law 19-83, § 2(a), 58 DCR 11024.)

Prior Codifications. — 1981 Ed., § 1-611.52.

Effect of amendments. — D.C. Law 19-83 rewrote subsec. (b), which had read as follows: “(b) The Mayor shall designate the appropriate level for each subordinate agency head position.”

Temporary Amendment of Section. — Section 2 of D.C. Law 17-56 substituted “7” for “5” in subsec. (a), and rewrote subsec. (b) to read as follows:

“(b)(1) The Mayor shall designate the appropriate pay level for each subordinate agency head position based on market analyses and other relevant criteria; provided, that any salary on the E6 or E7 pay grade shall be submitted to the Council for a 45-day period of review, excluding days of Council recess. If the Council does not approve or disapprove the proposed salary within the 45-day period, the proposed salary shall be deemed disapproved.

“(2) Notwithstanding paragraph (1) of this subsection, the requirement of Council approval of salaries shall not apply to:

“(A) The incumbents in the following offices as of July 25, 2007:

“(i) Chief Financial Officer;

“(ii) Chief of the Metropolitan Police Department;

“(iii) Chief of the Fire and Emergency Medical Services Department;

“(iv) Chancellor of the District of Columbia Public Schools; and

“(v) Director of the Office of Public Education Facilities Modernization; or

“(B) The first Chief Medical Examiner appointed by the Mayor and approved by the Council after July 25, 2007.”

Section 6(b) of D.C. Law 17-56 provided that the act shall expire after 225 days of its having taken effect.

Section 2 of D.C. Law 17-238, in subsec. (a), substituted “7” for “5”; and amended subsec. (b) to read as follows:

“(b)(1) The Mayor shall designate the appropriate pay level for each subordinate agency head position based on market analyses and

other relevant criteria; provided, that any salary on the E6 or E7 pay grade shall be submitted to the Council for a 45-day period of review, excluding days of Council recess. If the Council does not approve or disapprove the proposed salary within the 45-day period, the proposed salary shall be deemed disapproved.

“(2) Notwithstanding paragraph (1) of this subsection, Council approval is not required for the salary for Allen Lew as the Director of the Office of Public Education Facilities Modernization, upon the expiration of the Executive Service Compensation System Change and Pay Schedule Temporary Amendment Act of 2007, effective November 24, 2008 (D.C. Law 17-56; 54 DCR 10034).”

Section 6(b) of D.C. Law 17-238 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2 of Executive Service Compensation System Change and Pay Schedule Emergency Amendment Act of 2007 (D.C. Act 17-83, July 25, 2007, 54 DCR 8003).

For temporary (90 day) amendment of section, see § 2 of Executive Service Compensation System Change and Pay Schedule Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-155, October 18, 2007, 54 DCR 10915).

For temporary (90 day) amendment of section, see § 2 of Director of the Office of Public Education Facilities Modernization Allen Lew Compensation System Change and Pay Schedule Emergency Amendment Act of 2008 (D.C. Act 17-424, July 16, 2008, 55 DCR 8242).

For temporary (90 day) addition of sections, see §§ 2, 3 of Chancellor of the District of Columbia Public Schools Salary Adjustment Approval Emergency Act of 2011 (D.C. Act 19-137, August 9, 2011, 58 DCR 6802).

For temporary (90 day) amendment of section, see § 4 of Chancellor of the District of Columbia Public Schools Salary Adjustment Approval Emergency Act of 2011 (D.C. Act 19-137, August 9, 2011, 58 DCR 6802).

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Legislative history of Law 19-83. — Law 19-83, the “Executive Service Compensation Amendment Act of 2011”, was introduced in Council and assigned Bill No. 19-44, which was referred to the Committee on Government Operations and the Environment. The Bill was adopted on first and second readings on November 1, 2011, and December 6, 2011, respectively.

Signed by the Mayor on December 16, 2011, it was assigned Act No. 19-243 and transmitted to both Houses of Congress for its review. D.C. Law 19-83 became effective on February 24, 2012.

Resolutions. — Resolution 16-220, the “Executive Service Schedule Approval Resolution of 2005”, was approved effective July 6, 2005.

Editor’s notes. — Applicability of § 101(m) of D.C. Law 12-124: See Historical and Statutory Notes following § 1-610.51.

§ 1-610.53. Executive Service pay plan.

(a) A person appointed to a position in the Executive Service shall be appointed at the level on the DX Schedule designated for the subordinate agency to which he or she is appointed, and shall receive a salary set at any amount within the salary range for that level that the Mayor determines to be appropriate.

(b) The salary of any person holding an appointment to a position in the Executive Service may, at any time, be increased or decreased by the Mayor, at his or her sole discretion, to any other salary within the salary range for the level occupied.

(c) The salary of an employee in the Executive Service who is temporarily assigned to a position at a higher or lower level on the DX Schedule shall be set, at the discretion of the Mayor, at any rate within the salary range of the level to which the employee is temporarily assigned or the salary range of the level of the position from which officially appointed.

(d) A person paid from the DX Schedule shall not be entitled to premium pay.

(Mar. 3, 1979, D.C. Law 2-139, § 1053, as added June 10, 1998, D.C. Law 12-124, § 101(m), 45 DCR 2464.)

Prior Codifications. — 1981 Ed., § 1-611.53.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Editor’s notes. — Applicability of § 101(m) of D.C. Law 12-124: See Historical and Statutory Notes following § 1-610.51.

§ 1-610.54. Incumbents.

A person holding an appointment to a position in the Executive Service on October 21, 1998 shall continue to be paid at his or her existing rate of pay until the Mayor effects a personnel action establishing a new salary within the designated range for the level of the position to which the person is appointed.

(Mar. 3, 1979, D.C. Law 2-139, § 1054, as added June 10, 1998, D.C. Law 12-124, § 101(m), 45 DCR 2464.)

Prior Codifications. — 1981 Ed., § 1-611.54.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see His-

torical and Statutory Notes following § 1-603.01.

Editor's notes. — Applicability of § 101(m)

of D.C. Law 12-124: See Historical and Statutory Notes following § 1-610.51.

§ 1-610.55. Reasonable pre-employment travel and relocation expenses and temporary housing allowance.

Pursuant to regulations the Mayor may prescribe, the following expenses may be paid in connection with Executive Service employment:

(1) Reasonable pre-employment travel expenses for an individual being interviewed for a subordinate agency head position;

(2) Reasonable relocation expenses for an Executive Service selectee or appointee and his or her immediate family if they are relocating to the District of Columbia from outside the Greater Washington Metropolitan Area; and

(3) A reasonable temporary housing allowance, for a period not to exceed 60 days, for an Executive Service selectee or appointee and his or her immediate family.

(Mar. 3, 1979, D.C. Law 2-139, § 1055, as added June 10, 1998, D.C. Law 12-124, § 101(m), 45 DCR 2464.)

Prior Codifications. — 1981 Ed., § 1-611.55.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Editor's notes. — Applicability of § 101(m) of D.C. Law 12-124: See Historical and Statutory Notes following § 1-610.51.

§ 1-610.56. Additional income allowance.

An additional income allowance of up to 15% of the maximum rate of pay for the level held may be paid, at the discretion of the Mayor, to a subordinate agency head who is required to hold a medical degree and who enters into a service agreement.

(Mar. 3, 1979, D.C. Law 2-139, § 1056, as added June 10, 1998, D.C. Law 12-124, § 101(m), 45 DCR 2464.)

Prior Codifications. — 1981 Ed., § 1-611.56.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Editor's notes. — Applicability of § 101(m) of D.C. Law 12-124: See Historical and Statutory Notes following § 1-610.51.

§ 1-610.57. Performance incentives.

The Mayor may authorize performance incentives for exceptional service for subordinate agency heads not to exceed 10% of the rate of basic pay in any year. Exceptional service incentives may be paid only if:

(1) The agency head is bound by a performance contract, available to the

public upon request, that clearly identifies measurable goals and outcomes; and

(2) The agency head has exceeded contractual expectations in the year for which the incentive is paid.

(Mar. 3, 1979, D.C. Law 2-139, § 1057, as added June 10, 1998, D.C. Law 12-124, § 101(m), 45 DCR 2464; Oct. 1, 2002, D.C. Law 14-190, § 2802, 49 DCR 6968.)

Prior Codifications. — 1981 Ed., § 1-611.57.

Effect of amendments. — D.C. Law 14-190 rewrote the section which had read as follows: “The Mayor may authorize performance incentives for exceptional service for subordinate agency heads not to exceed 10% of the rate of basic pay in any year. Exceptional service incentives may be paid only when the agency head is bound by a performance contract that clearly identifies measurable goals and outcomes and the agency head has exceeded contractual expectations in the year for which the incentive is paid.”

Emergency legislation. — For temporary (90 day) amendment of section, see § 2702 of Fiscal Year 2003 Budget Support Emergency

Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Legislative history of Law 14-190. — For Law 14-190, see notes following § 1-301.131.

Short title. — Short title of title XXVIII of Law 14-190: Section 2801 of D.C. Law 14-190 provided that title XXVIII of the act may be cited as the Executive Compensation and Fiscal Responsibility Amendment Act of 2002.

Editor’s notes. — Applicability of § 101(m) of D.C. Law 12-124: See Historical and Statutory Notes following § 1-610.51.

§ 1-610.58. Separation pay.

(a) A subordinate agency head may be paid separation pay of up to 12 weeks of his or her basic pay upon separation from the government at the discretion of the Mayor; provided that, the agency head has been a District government employee for at least one year prior to the separation; otherwise the separation pay shall not exceed 4 weeks of the agency head’s basic pay.

(b)(1) Notwithstanding subsection (a) of this section and except as provided in paragraph (2) of this subsection, Charles H. Ramsey, Chief of Police, shall be paid separation pay equivalent to up to 6 months of his basic pay upon involuntary separation from the District government by the Mayor if the involuntary separation is without cause.

(2) If Chief Ramsey is involuntarily separated without cause at any time during the last 6 months of his term, as that term is set forth in § 5-105.01(c), he shall be entitled to separation pay equal to the actual number of days remaining in his term.

(Mar. 3, 1979, D.C. Law 2-139, § 1058, as added June 10, 1998, D.C. Law 12-124, § 101(m), 45 DCR 2464; Mar. 7, 2000, D.C. Law 13-52, § 3, 46 DCR 9911; Mar. 2, 2007, D.C. Law 16-199, § 2, 53 DCR 8832.)

Prior Codifications. — 1981 Ed., § 1-611.58.

Effect of amendments. — D.C. Law 13-52 added “provided that, the agency head has been a District government employee for at least one year prior to the separation; otherwise the

separation pay shall not exceed 4 weeks of the agency head’s basic pay”.

D.C. Law 16-199 designated the existing text as subsec. (a); and added subsec. (b).

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see His-

torical and Statutory Notes following § 1-603.01.

Legislative history of Law 13-52. — For Law 13-52, see notes following § 1-609.3.

Legislative history of Law 16-199. — Law 16-199, the “Separation Pay, Term of Office and Voluntary Retirement Modifications for Chief of Police Charles H. Ramsey Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-733, which was referred to the

Committee on Judiciary. The Bill was adopted on first and second readings on July 11, 2006, and October 3, 2006, respectively. Signed by the Mayor on October 23, 2006, it was assigned Act No. 16-494 and transmitted to both Houses of Congress for its review. D.C. Law 16-199 became effective on March 2, 2007.

Editor’s notes. — Applicability of § 101(m) of D.C. Law 12-124: See Historical and Statutory Notes following § 1-610.51.

§ 1-610.59. District of Columbia domicile.

(a) The provisions of § 1-609.06(a) through (h) shall apply to employment in the Executive Service.

(b) Repealed.

(c) Repealed.

(Mar. 3, 1979, D.C. Law 2-139, § 1059, as added June 10, 1998, D.C. Law 12-124, § 101(m), 45 DCR 2464; Apr. 13, 1999, D.C. Law 12-220, § 2, 46 DCR 481; April 12, 2000, D.C. Law 13-84, § 2, 47 DCR 0455; Oct. 1, 2002, D.C. Law 14-185, § 2(c), 49 DCR 6073; Oct. 19, 2002, D.C. Law 14-213, § 3(d), 49 DCR 8140; Mar. 13, 2004, D.C. Law 15-105, § 19(b), 51 DCR 881; Feb. 6, 2008, D.C. Law 17-108, § 203(f), 54 DCR 10993.)

Prior Codifications. — 1981 Ed., § 1-611.59.

Effect of amendments. — D.C. Law 13-84 added subsec. (c).

D.C. Law 14-185, in the section heading, substituted “District of Columbia domicile” for “District residency”; and rewrote subsec. (a).

D.C. Law 14-213 repealed subsec. (c) which had read as follows: “(c) The provisions of subsection (a) of this section may be waived for Elliott B. Branch, confirmed as Chief Procurement Officer for a 5-year term beginning November 2, 1999.”

D.C. Law 15-105 validated a previously made technical correction.

D.C. Law 17-108 repealed subsec. (b), which had read as follows: “(b) The provisions of subsection (a) of this section may be waived for an individual appointed as Chief Technology Officer.”

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.1.

Legislative history of Law 12-220. — Law 12-220, the “Executive Service Residency Requirement Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-811, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on December 9, 1998, it was assigned Act No. 12-535 and transmitted to

both Houses of Congress for its review. D.C. Law 12-220 became effective on April 13, 1999.

Legislative history of Law 13-84. — Law 13-84, the “Executive Service Residency Requirement Amendment Act of 1999,” was introduced in Council and assigned Bill No. 13-414, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 2, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 22, 1999, it was assigned Act No. 13-216 and transmitted to both Houses of Congress for its review. D.C. Law 13-84 became effective on April 12, 2000.

Legislative history of Law 14-185. — For Law 14-185, see notes following § 1-603.01.

Legislative history of Law 14-213. — For Law 14-213, see notes following § 1-603.01.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 1-301.47.

Legislative history of Law 17-108. — For Law 17-108, see notes following § 1-209.05.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.1.

Legislative history of Law 12-220. — Law 12-220, the “Executive Service Residency Requirement Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-811, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively.

Signed by the Mayor on December 9, 1998, it was assigned Act No. 12-535 and transmitted to both Houses of Congress for its review. D.C. Law 12-220 became effective on April 13, 1999.

Legislative history of Law 13-84. — Law 13-84, the “Executive Service Residency Requirement Amendment Act of 1999,” was introduced in Council and assigned Bill No. 13-414, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 2, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 22, 1999, it was as-

signed Act No. 13-216 and transmitted to both Houses of Congress for its review. D.C. Law 13-84 became effective on April 12, 2000.

Legislative history of Law 14-185. — For Law 14-185, see notes following § 1-603.01.

Legislative history of Law 14-213. — For Law 14-213, see notes following § 1-603.01.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 1-301.47.

Editor’s notes. — Applicability of § 101(m) of D.C. Law 12-124: See Historical and Statutory Notes following § 1-610.51.

§ 1-610.60. Subsequent appointments.

No person holding a position in the Executive Service may be appointed to a position in the Career, Educational, or Management Supervisory Service for at least one year immediately following his or her separation from the Executive Service, except that, upon termination, a person with Career, Educational, or Management Supervisory Service status may retreat, at the discretion of the Mayor, within 3 months to a vacant position in the service for which he or she is qualified.

(Mar. 3, 1979, D.C. Law 2-139, § 1060, as added June 10, 1998, D.C. Law 12-124, § 101(m), 45 DCR 2464.)

Prior Codifications. — 1981 Ed., § 1-611.60.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Editor’s notes. — Applicability of § 101(m) of D.C. Law 12-124: See Historical and Statutory Notes following § 1-610.51.

§ 1-610.61. Universal leave.

The Executive Service employees’ leave system shall provide the following:

- (1) No employee shall earn annual or sick leave.
- (2) Each employee shall have a universal leave account.
- (3) Each employee’s universal leave account shall be credited with 208 hours on the first pay period of the leave year, or on a pro-rata basis for appointments after the first pay period of the leave year.
- (4) No employee shall be charged for leave for any absence which is less than 2 hours.
- (5) An employee may carry over, for use in succeeding years, not more than 40 hours of unused universal leave.
- (6) Each employee in the Executive Service on the last day of the last pay period of the leave year shall have his or her accrued annual leave balance, up to a maximum of 240 hours, transferred to an escrow account for use at the discretion of the employee until exhausted. The employee will be given a lump-sum payment for any annual leave in excess of 240 hours, payable at the rate of pay in effect immediately before the transition.
- (7) Each employee appointed without a break in service to a position in the Executive Service from another position in the District government, on or

after the first day of the first pay period after enactment of this section shall have his or her accrued annual leave balance, up to a maximum of 240 hours, transferred to an escrow account for use at the discretion of the employee until exhausted. The employee will be given a lump-sum payment for any annual leave in excess of 240 hours, payable at the rate of pay in effect immediately before his or her appointment in the Executive Service.

(8) Upon separation from his or her position in the Executive Service, any annual leave remaining in the escrow account and any universal leave to his or her credit (less a pro-rated amount representing the portion of the leave that would be creditable for the remainder of the year) will be paid at the employee's rate of pay at the time of separation.

(9) Sick leave previously accrued under a different leave system shall be held in an escrow account and may be used at the discretion of the employee until exhausted.

(10) The Mayor may establish a disability income protection program for Executive Service employees to include short and long-term disability insurance which shall provide coverage for non-job related illness or injury.

(Mar. 3, 1979, D.C. Law 2-139, § 1061, as added June 10, 1998, D.C. Law 12-124, § 101(m), 45 DCR 2464; Mar. 26, 1999, D.C. Law 12-175, § 2301, 45 DCR 7193; Apr. 20, 1999, D.C. Law 12-264, § 5(b), 46 DCR 2118; Apr. 27, 1999, D.C. Law 12-267, § 5, 46 DCR 960; Mar. 14, 2012, D.C. Law 19-115, § 2(g), 59 DCR 461.)

Prior Codifications. — 1981 Ed., § 1-611.61.

Effect of amendments. — D.C. Law 19-115, in par. (3), substituted "208 hours" for "26 days"; in par. (4), substituted "2 hours" for "8 hours"; and, in par. (5), substituted "40 hours" for "5 days".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 7 of Fiscal Year 1999 Budget Support Temporary Amendment Act of 1998 (D.C. Law 12-211, April 13, 1999, law notification 46 DCR 3833).

Emergency legislation. — For temporary amendment of section, see §§ 6 and 7 of the Fiscal year 1999 Budget Support Emergency Amendment Act of 1998 (D.C. Act 12-480, October 28, 1998, 45 DCR 8016), and §§ 6 and 7 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-4, February 8, 1999, 46 DCR 2291).

For temporary amendment of section, see § 1901 of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, 45 DCR 7229), as amended by § 6 of D.C. Law 12-211, and § 1901 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

Section 1902 of D.C. Act 12-401 provided that § 1901(a) and (b) shall apply upon the enact-

ment by the United States Congress of legislation adopting § 101(m) of the Omnibus Personnel Reform Amendment Act of 1998, signed by the Mayor on April 1, 1998 (D.C. Law 12-124; 45 DCR 2464).

For temporary (90-day) amendment of section, see § 1901 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1999 (D.C. Act 13-41, March 31, 1999, 46 DCR 3446).

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Legislative history of Law 12-175. — For legislative history of D.C. Law 12-175, see Historical and Statutory Notes following § 1-603.01.

Legislative history of Law 12-264. — For legislative history of D.C. Law 12-264, see Historical and Statutory Notes following § 1-603.01.

Legislative history of Law 12-267. — Law 12-267, the "Closing of a Public Alley in Square 371, S.O. 96-202, Act of 1998," was introduced in Council and assigned Bill No. 12-800. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 23, 1998, it was assigned Act No. 12-576 and transmitted to both Houses of Congress for its

review. D.C. Law 12-267 became effective on April 27, 1999.

Legislative history of Law 19-115. — For history of Law 19-115, see notes under § 1-608.01.

Editor's notes. — Applicability of § 101(m) of D.C. Law 12-124: See Historical and Statutory Notes following § 1-610.51.

Applicability of § 2301(a) and (b) of D.C. Law 12-175: Section 2302 of D.C. Law 12-175, as amended by § 63 of D.C. Law 12-264, provided that § 2301(a) and (b) of the act shall apply as of October 21, 1998.

§ 1-610.62. Retirement benefits.

Executive Service employees shall be covered under subchapter XXVI of this chapter, except that employees first hired after September 30, 1987, may elect to participate in the District's defined contribution plan or may elect to have the funds that would otherwise be contributed by the District under the defined contribution plan directed to another 401(a) retirement plan.

(Mar. 3, 1979, D.C. Law 2-139, § 1062, as added June 10, 1998, D.C. Law 12-124, § 101(m), 45 DCR 2464.)

Prior Codifications. — 1981 Ed., § 1-611.62.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Editor's notes. — Applicability of § 101(m) of D.C. Law 12-124: See Historical and Statutory Notes following § 1-610.51.

§ 1-610.63. Life insurance benefits.

Executive Service employees shall be covered by the provisions of subchapter XXII of this chapter, except that any Executive Service employee, whether covered by federal life insurance benefits (pursuant to § 1-622.01) or District life insurance benefits (pursuant to § 1-622.03), may receive additional coverage for himself or herself, not to exceed twice the rate of that employee's basic pay. The cost of that coverage shall be borne solely by the District government.

(Mar. 3, 1979, D.C. Law 2-139, § 1063, as added June 10, 1998, D.C. Law 12-124, § 101(m), 45 DCR 2464.)

Prior Codifications. — 1981 Ed., § 1-611.63.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Editor's notes. — Applicability of § 101(m) of D.C. Law 12-124: See Historical and Statutory Notes following § 1-610.51.

§ 1-610.64. Employment contracts with subordinate agency heads.

(a) The Mayor shall not enter into an employment contract with a subordinate agency head that contains terms and conditions of employment that are inconsistent with existing law.

(b) If the Mayor executes an employment contract with a subordinate agency head in the Executive Service, the contract shall be posted to the

website of the District of Columbia Department of Human Resources within 30 days of signing. The requirement to post the contract shall be subject to relevant exemptions pursuant to § 2-534 and required disclosures pursuant to § 2-536.

(c) An employment contract, if any, with a subordinate agency head shall be transmitted to the Council simultaneously with the transmittal of the nomination of the subordinate agency head.

(Mar. 3, 1979, D.C. Law 2-139, § 1064, as added Feb. 24, 2012, D.C. Law 19-83, § 2(b), 58 DCR 11024.)

Legislative history of Law 19-83. — For history of Law 19-83, see notes under § 1-610.64.

Subchapter X-B. Lateral Police Career Appointments.

§ 1-610.71. Definitions.

For the purposes of this part, the term “lateral law enforcement officer” means:

- (1)(A) A member of the Capitol Police;
- (B) A member of the United States Park Police;
- (C) A member of the Federal Protective Service;
- (D) A member of the United States Secret Service Uniformed Division;

or

(E) An employee, the duties of whose position are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States of America or any state of the United States of America, including the positions of county sheriff and municipal policeman; or

(2) A person who has performed in any capacity described in paragraph (1) of this section within 12 months of his or her application to the Metropolitan Police Department.

(Mar. 3, 1979, D.C. Law 2-139, § 1071, as added Oct. 4, 2000, D.C. Law 13-160, § 102(b), 47 DCR 4619.)

Prior Codifications. — 1981 Ed., § 1-611.71.

Emergency legislation. — For temporary (90-day) addition of section, see § 2(b) of the Lateral Appointment of Law Enforcement Officers Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-305, April 7, 2000, 47 DCR 2701).

Legislative history of Law 13-160. — Law 13-160, the “Omnibus Police Reform Amend-

ment Act of 2000,” was introduced in Council and assigned Bill No. 13-118, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on February 1, 2000, and April 3, 2000, respectively. Signed by the Mayor on April 24, 2000, it was assigned Act No. 13-334 and transmitted to both Houses of Congress for its review. D.C. Law 13-160 became effective on October 4, 2000.

§ 1-610.72. Salary and Assignment for appointment of Metropolitan Police Department at Class 1 — Private.

Notwithstanding any other law or regulation, the Mayor, or the Mayor's designee, may appoint a lateral law enforcement officer to the Metropolitan Police Department without regard to any time in grade or prior department service or incumbency requirements. A lateral law enforcement officer appointed by the Mayor, or by the Mayor's designee, shall be appointed as a Class 1—Private with compensation at the appropriate rate for this classification, and shall be assigned to duty as prescribed by the Mayor, or by the Mayor's designee.

(Mar. 3, 1979, D.C. Law 2-139, § 1072, as added Oct. 4, 2000, D.C. Law 13-160, § 102(b), 47 DCR 4619.)

Prior Codifications. — 1981 Ed., § 1-611.72.

Emergency legislation. — For temporary (90-day) addition of section, see § 2(b) of the Lateral Appointment of Law Enforcement Offi-

cers Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-305, April 7, 2000, 47 DCR 2701).

Legislative history of Law 13-160. — For Law 13-160, see notes following § 1-610.71.

§ 1-610.73. Treatment of lateral law enforcement officers as police hired after September 30, 1987.

Except as provided in § 1-610.74 a lateral law enforcement officer hired pursuant to § 1-610.72 shall be covered by the provisions of this chapter applicable to members of the Metropolitan Police Department hired after September 30, 1987.

(Mar. 3, 1979, D.C. Law 2-139, § 1073, as added Oct. 4, 2000, D.C. Law 13-160, § 102(b), 47 DCR 4619.)

Prior Codifications. — 1981 Ed., § 1-611.73.

Emergency legislation. — For temporary (90-day) addition of section, see § 2(b) of the Lateral Appointment of Law Enforcement Offi-

cers Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-305, April 7, 2000, 47 DCR 2701).

Legislative history of Law 13-160. — For Law 13-160, see notes following § 1-610.71.

§ 1-610.74. Leave accrual for lateral law enforcement officers.

For the purposes of § 1-612.03, years of law enforcement experience, as determined by the Mayor or his or her designee, shall constitute years of District government service for any employee hired as a lateral law enforcement officer pursuant to § 1-610.72.

(Mar. 3, 1979, D.C. Law 2-139, § 1074, as added Oct. 4, 2000, D.C. Law 13-160, § 102(b), 47 DCR 4619.)

Prior Codifications. — 1981 Ed., § 1-611.74.

Emergency legislation. — For temporary (90-day) addition of section, see § 2(b) of the

Lateral Appointment of Law Enforcement Officers Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-305, April 7, 2000, 47 DCR 2701).

Legislative history of Law 13-160. — For Law 13-160, see notes following § 1-610.71.

§ 1-610.75. Retirement benefits for lateral law enforcement officers hired after January 11, 2000.

(a) For the purposes of retirement benefits, an employee hired as a lateral law enforcement officer pursuant to § 1-610.72 shall elect to be covered by § 1-901.01 et seq. These lateral law enforcement officers shall be treated as new hires for retirement purposes except as provided by law for federal government and military service and except as provided by § 1-610.76.

(b) Repealed.

(Mar. 3, 1979, D.C. Law 2-139, § 1075, as added Oct. 4, 2000, D.C. Law 13-160, § 102(b), 47 DCR 4619; Oct. 19, 2000, D.C. Law 13-172, § 812, 47 DCR 6308; Sept. 30, 2004, D.C. Law 15-194, § 1202, 51 DCR. 9406)

Prior Codifications. — 1981 Ed., § 1-611.75.

Effect of amendments. — D.C. Law 13-172 added subsec. (b).

D.C. Law 15-194 repealed subsec. (b) which had read as follows: “(b) Metropolitan Police Officers hired after January 11, 2000, and prior to December 31, 2003, shall have successfully completed at least 60 post-secondary semester hours from an accredited university by the fifth anniversary of the date hired.”

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3 of Metropolitan Police Department Education Requirement Clarification Temporary Amendment Act of 2004 (D.C. Law 15-147, April 22, 2004, law notification 51 DCR 4931).

Emergency legislation. — For temporary (90-day) addition of section, see § 2(b) of the Lateral Appointment of Law Enforcement Officers Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-305, April 7, 2000, 47 DCR 2701).

For temporary (90-day) amendment of section, see § 812(a), (b) of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see § 812(b) of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

For temporary (90 day) amendment of section, see § 3 of Metropolitan Police Department Educational Requirement Clarification Emergency Amendment Act of 2004 (D.C. Act 15-323, January 28, 2004, 51 DCR 1586).

Legislative history of Law 13-160. — For Law 13-160, see notes following § 1-610.71.

Legislative history of Law 13-172. — Law 13-172, the “Fiscal Year 2001 Budget Support Act of 2000,” was introduced in Council and assigned Bill No. 13-679, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 18, 2000, and June 6, 2000, respectively. Signed by the Mayor on June 26, 2000, it was assigned Act No. 13-375 and transmitted to both Houses of Congress for its review. D.C. Law 13-172 became effective on October 19, 2000.

Legislative history of Law 15-194. — For Law 15-194, see notes following § 1-604.02.

§ 1-610.76. Credit for prior law enforcement service.

In computing length of service of a retiring lateral law enforcement officer hired pursuant to § 1-610.72, credit shall be granted for prior law enforcement service outside the Metropolitan Police Department only if the lateral law enforcement officer has deposited to the credit of the Police Officers’ and Firefighters’ Retirement Fund an amount that is equal to the dollar increase in the present value of future benefits which results from crediting the prior service. The calculation of the present value of future benefits shall be based on

the actuarial assumptions and methods used to calculate the present value of future benefits from § 1-907.03(a)(3)(B) for the applicable fiscal year. Upon separation from District law enforcement duty for reasons other than retirement, any law enforcement officer who purchased prior service credit shall receive that purchase amount along with any interest credited on the amount. Any law enforcement officer that withdraws the purchase amount and is later reinstated shall not be entitled to this prior service credit until the purchase amount plus interest is again deposited.

(Mar. 3, 1979, D.C. Law 2-139, § 1076, as added Oct. 4, 2000, D.C. Law 13-160, § 102(b), 47 DCR 4619.)

Cross references. — Merit system, effective date provisions, see § 1-636.02.

Legislative history of Law 13-160. — For Law 13-160, see notes following § 1-610.71.

Prior Codifications. — 1981 Ed., § 1-611.76.

Subchapter XI. Classification; Compensation.

§ 1-611.01. Classification policy; grade levels; publication required; public hearing.

(a) The classification of all positions in the Career, Educational, Legal, Excepted, and the Management Supervisory Services will be accomplished in accordance with the following policy:

(1) Individual positions will be grouped and identified by classes and grades, in accordance with their duties, responsibilities, and qualification requirements and shall be indexed and cross referenced in the incumbent classification and compensation system; and

(2) The principle of equal pay for substantially equal work will be supported.

(b) The grade levels of all positions in the Career, Educational, Legal, Excepted, and the Management Supervisory Services shall be based on the consideration of applicable factors, such as knowledge and skills required by the positions; supervisory controls exercised over the work; guidelines used; complexity of the work; scope and effect of the work; personal contacts; purpose of contacts; physical demands of the positions; and work environment.

(c) Classification systems or proposals developed under the authority of this subchapter shall be published in the District of Columbia Register at least 60 days prior to their proposed effective date. The Mayor or the Board of Education or the Board of Trustees of the University of the District of Columbia shall hold, as provided in this subchapter, a public hearing on all such proposals he, she, or it has published in the District of Columbia Register prior to his, her, or its adoption of a classification system or amendment to such system; provided, that the classification system or systems in effect on December 31, 1979, shall remain in effect until the adoption of a classification system or systems pursuant to § 1-611.02 or § 1-611.11.

(Mar. 3, 1979, D.C. Law 2-139, § 1101, 25 DCR 5740; Mar. 4, 1981, D.C. Law 3-130, § 2(a), 28 DCR 277; Feb. 24, 1987, D.C. Law 6-177, § 3(k), 33 DCR

7241; Aug. 1, 1996, D.C. Law 11-152, § 302(j), 43 DCR 2978; Apr. 12, 2000, D.C. Law 13-91, § 103(m), 47 DCR 520; Oct. 19, 2002, D.C. Law 14-213, § 3(e), (f), 49 DCR 8140.)

Cross references. — Rent administrator, compensation, see § 42-3502.03.

Rental housing commission members, compensation, see § 42-3502.01.

Section references. — This section is referred to in §§ 1-611.02 and 1-61

Prior Codifications. — 1981 Ed., § 1-612.1.

1973 Ed., § 1-341.1.

Effect of amendments. — D.C. Law 13-91, in the introductory portion of subsec. (a) and in subsec. (b), inserted “Legal.”

D.C. Law 14-213, in subsec. (a), substituted “Excepted, and the Management Supervisory Services” for “and the Excepted Services”; and in subsec. (b), substituted “Excepted, and the Management Supervisory Services” for “and Excepted Services”.

Temporary Repeal of Section For temporary (225 day) repeal of D.C. Law 15-25, see § 2 of Freeze of Within-Grade Salary Increase Repeal Temporary Act of 2003 (D.C. Law 15-49, December 9, 2003, law notification 51 DCR 1784).

Temporary legislation. — For temporary (225 day) additions, see §§ 101 to 104 of Fiscal Year 2003 Budget Support Temporary Act of 2003 (D.C. Law 15-25, July 22, 2003, law notification 50 DCR 6095).

Emergency legislation. — For temporary (90-day) amendment of section, see § 2(c) of the Legal Services Clarification and Technical Emergency Amendment Act of 1999 (D.C. Act 13-203, December 8, 1999, 46 DCR 10456).

For temporary (90-day) amendment of section, see § 2(c) of the Legal Services Clarification and Technical Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-293, March 7, 2000, 47 DCR 2063).

For temporary (90 day) Freeze of Within-Grade Salary Increases provisions, see §§ 102 and 103 of Fiscal Year 2003 Budget Support Emergency Act of 2003 (D.C. Act 15-51, March 31, 2003, 50 DCR 2954).

For temporary (90 day) Freeze of Within-Grade Salary Increases provisions, see §§ 102 and 103 of Fiscal Year 2003 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-97, June 20, 2003, 50 DCR 5472).

For temporary (90 day) repeal of Freeze of Within-Grade Salary Increases provisions of Title I of the Fiscal Year 2003 Budget Support Emergency Act of 2003 (D.C. Act 15-51), Title I of the Fiscal Year 2003 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-97), and Title I of the Fiscal Year 2003 Budget Support Temporary Act of 2003 (D.C. Act 15-92), see §§ 2 and 3 of the Freeze of

Within-Grade Salary Increase Repeal Emergency Act of 2003 (D.C. Act 15-122, July 29, 2003, 50 DCR 6619).

For temporary (90 day) additions, see §§ 1022 to 1027 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

For temporary (90 day) addition of section, see § 1142 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

For temporary (90 day) addition of sections, see §§ 2 to 5 of Financial Stability Measures Emergency Act of 2010 (D.C. Act 18-588, October 19, 2010, 57 DCR 10140).

For temporary (90 day) amendment of section, see § 2 of Financial Stability Measures Clarification Emergency Amendment Act of 2010 (D.C. Act 18-593, November 3, 2010, 57 DCR 10475).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 3-130. — For legislative history of D.C. Law 3-130, see Historical and Statutory Notes following § 1-611.14.

Legislative history of Law 6-177. — For legislative history of D.C. Law 6-177, see Historical and Statutory Notes following § 1-601.02.

Legislative history of Law 11-152. — For legislative history of D.C. Law 11-152, see Historical and Statutory Notes following § 1-602.02.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-602.03.

Legislative history of Law 14-213. — For Law 14-213, see notes following § 1-603.01.

Editor's notes. — Repeal of § 3 of Law 6-177: Section 4(b) of D.C. Law 6-177 provided that the provisions of § 3 are repealed on the 1st day following the 36-month period after February 24, 1987.

Repeal of § 4(b) of Law 6-177: Section 3(b) of D.C. Law 8-74, effective March 15, 1990, provided that § 4(b) of D.C. Law 6-177 is repealed.

Compensation for District employees: Section 120 of Pub. L. 104-194, 110 Stat. 2366, the District of Columbia Appropriations Act, 1997, provided that notwithstanding any other provisions of law, the provisions of § 1-601.01 et seq., enacted pursuant to § 1-204.22(3), shall apply with respect to the compensation of District of Columbia employees and provided that, for pay purposes, employees of the District of

Columbia government shall not be subject to the provisions of title 5 of the United States Code.

CASE NOTES

In general.

Following dismissal of constitutional claims, pendent claims of retired military personnel challenging District of Columbia statute [D.C. Code 1981, § 1-612.3(b)] reducing salaries of federal and District of Columbia annuitants employed by the District would also be dismissed, as the claims involved unexplored questions of state law which would best be left to local courts, and judicial economy would not be served by retaining remaining local claim premised on equitable estoppel. D.C. Code 1981, §§ 1-201 et seq., 1-612.1(a)(2). *Barnes v. District of Columbia*, 611 F. Supp. 130, 1985 U.S. Dist. LEXIS 19787 (1985).

Former university employee's claim that termination as part of reduction in force (RIF) was unlawful because his job had been erroneously

classified into class providing less advantageous RIF procedures than had his previous classification was precluded by failure to exhaust administrative remedies at time of his promotion and reclassification over a year previously; requiring exhaustion would serve the purposes of the exhaustion doctrine by providing courts with expertise of Office of Employee Appeals (OEA) on classification issue, and timely grievance would have allowed university to redefine the duties of the position to remove uncertainty about its classification. D.C. Code 1981, §§ 1-603.1, 1-606.3(a), 1-612.1, 1-612.11; D.C. Mun. Regs. title 8, §§ 1600.3, 1600.5, 1600.6, 1600.7. *Gilmore v. Board of Trustees of the Univ. of the District of Columbia*, 695 A.2d 1164, 1997 D.C. App. LEXIS 119 (1997).

§ 1-611.02. Establishment and maintenance of classification system for Career, Legal, Excepted, and Management Supervisory Services employees.

(a) In order to carry out the policies of § 1-611.01, the Mayor shall provide for the development of a classification system covering all positions in the Career, Legal, Excepted, and the Management Supervisory Services.

(b) The Mayor shall provide that all positions covered by this classification system are properly described in writing in accordance with the principal duties and responsibilities officially assigned to those positions and shall provide that all positions are properly evaluated by application of official classification standards, in accordance with accepted classification principles and techniques and in accordance with applicable rules and regulations. The Mayor shall provide for meaningful consultation with the District of Columbia Board of Education and the Board of Trustees of the University of the District of Columbia in the classification of positions of persons in the Career Service employed by the educational Boards.

(c) Repealed.

(d) Classification systems or proposals developed under the authority of this section shall be published in the District of Columbia Register at least 60 days prior to their proposed effective date. The Mayor shall hold a public hearing on all such proposals he or she publishes in the District of Columbia Register prior to his or her adoption of a classification system(s) or amendment to such system(s).

(Mar. 3, 1979, D.C. Law 2-139, § 1102, 25 DCR 5740; Feb. 24, 1987, D.C. Law 6-177, § 3(l), 33 DCR 7241; Aug. 1, 1996, D.C. Law 11-152, § 302(k), 43 DCR 2978; June 10, 1998, D.C. Law 12-124, § 101(n)(1), 45 DCR 2464; Apr. 12,

2000. D.C. Law 13-91, § 103(n), 47 DCR 520; Oct. 19, 2002, D.C. Law 14-213, § 3(g), 49 DCR 8140.)

Section references. — This section is referred to in § 1-611.01.

Prior Codifications. — 1981 Ed., § 1-612.2.

1973 Ed., § 1-341.2.

Effect of amendments. — D.C. Law 13-91, in subsec. (a), inserted “Legal,”.

D.C. Law 14-213, in subsec. (a), substituted “Excepted, and the Management Supervisory Services” for “and the Excepted Services”.

Emergency legislation. — For temporary (90-day) amendment of section, see § 2(d) of the Legal Services Clarification and Technical Emergency Amendment Act of 1999 (D.C. Act 13-203, December 8, 1999, 46 DCR 10456).

For temporary (90-day) amendment of section, see § 2(d) of the Legal Services Clarification and Technical Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-293, March 7, 2000, 47 DCR 2063).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 6-177. — For legislative history of D.C. Law 6-177, see Historical and Statutory Notes following § 1-601.02.

Legislative history of Law 11-152. — For legislative history of D.C. Law 11-152, see Historical and Statutory Notes following § 1-602.02.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-602.03.

Legislative history of Law 14-213. — For Law 14-213, see notes following § 1-603.01.

Editor’s notes. — Repeal of § 3 of Law 6-177: Section 4(b) of D.C. Law 6-177 provided that the provisions of § 3 are repealed on the 1st day following the 36-month period after February 24, 1987.

Repeal of § 4(b) of Law 6-177: Section 3(b) of D.C. Law 8-74, effective March 15, 1990, provided that § 4(b) of D.C. Law 6-177 is repealed.

Applicability of § 101(n) of D.C. Law 12-124: Section 401(c) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(h), (l), (m), (n), (o)(2) through (5), (q), (r), (t), (u), (w), and (y) of the act shall apply as of October 21, 1998.

§ 1-611.03. Compensation policy; compensatory time off; overtime pay.

(a) Compensation for all employees in the Career, Educational, Legal, Excepted, and the Management Supervisory Services shall be fixed in accordance with the following policy:

(1) Compensation shall be competitive with that provided to other public sector employees having comparable duties, responsibilities, qualifications, and working conditions by occupational groups. For the purpose of this paragraph, compensation shall be deemed to be competitive if it falls reasonably within the range of compensation prevailing in the Washington, D.C., Standard Metropolitan Statistical Area (SMSA); provided, that compensation levels may be examined for public and/or private employees outside the area and/or for federal government employees when necessary to establish a reasonably representative statistical basis for compensation comparisons, or when conditions in the local labor market require a larger sampling of prevailing compensation levels.

(2) Pay for the various occupations and groups of employees shall be, to the maximum extent practicable, interrelated and equal for substantially equal work in accordance with this principle, dental officers shall be paid on the same schedule as medical officers having comparable qualifications and experiences.

(3) Differences in pay shall be maintained in keeping with differences in level of work and quality of performance.

(4) Repealed.

(5) Repealed.

(6) Repealed.

(7)(A) Any full-time permanent, indefinite, or term District government employee who serves in a reserve component of the United States Armed Forces and who has been or will be called to active duty as a result of Operation Enduring Freedom, or in preparation for or as a result of Operation Iraqi Freedom, shall receive, upon application and approval, an amount that equals the difference in compensation between the employee's District government basic pay reduced by the employee's basic military pay. This amount shall not be considered as basic pay for any purpose and shall be paid for any period following the formal inception of Operation Enduring Freedom in 2001, any period following the beginning of the preparation for Operation Iraqi Freedom in 2002 and 2003, or for any period following the formal inception of Operation Iraqi Freedom in 2003, during which the employee is carried in a non-pay status from the time the employee is called into active duty, until the employee is released from active duty occasioned by any of these military conflicts.

(B) The Mayor shall issue rules within 30 days of March 26, 2008, to implement the provisions of this paragraph.

(b) The pay of an individual receiving an annuity under any District government civilian retirement system selected for employment in the District government on or after January 1, 1980, shall be reduced by the amount of annuity allocable to the period of employment as a reemployed annuitant. No reduction shall be made to the pay of a reemployed individual for any retirement benefits received by the reemployed individual pursuant to 5 U.S.C. § 8331, §§ 1-626.03 through 1-626.12, § 5-723(e), the Judges' Retirement Fund, established by § 1-714, or the Retired Police Officer Public Schools Security Personnel Deployment Amendment Act of 1994.

(c) Repealed.

(d) Notwithstanding any other provisions of law or regulation, effective April 15, 1986, any employee who is covered by the provisions of the Fair Labor Standards Act of 1938 (29 U.S.C. § 201 et seq.) ("FLSA"), and is eligible to earn compensatory time may receive compensatory time off at a rate not less than 1 and one-half hours for each hour of employment for which overtime compensation is required under the FLSA, in lieu of paid overtime compensation.

(1) If the work of an employee for which compensatory time off may be provided includes work in a public safety activity, an emergency response activity, or a seasonal activity, the employee may accrue not more than 480 hours of compensatory time for hours worked after April 15, 1986. If the work of an employee does not include work in a public safety activity, an emergency response activity, or a seasonal activity, the employee may accrue not more than 240 hours of compensatory time for hours worked after April 15, 1986.

(2) Any employee who, after April 15, 1986, has accrued the maximum number of hours of compensatory time off allowed under paragraph (1) of this subsection shall, for additional hours of work, be paid overtime compensation.

(e) Notwithstanding any other provision of District law or regulation, effective on the first day of the first pay period beginning one month after November 25, 1993, entitlement to and computation of overtime for all employees of the District government, except those covered by a collective bargaining agreement providing otherwise, shall be determined in accordance with, and shall not exceed, the overtime provisions of section 7 of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 207. No person shall be entitled to overtime under this section unless that person is either entitled to overtime under the Fair Labor Standards Act or is entitled to overtime under the personnel rules of the District of Columbia as they existed at the time of enactment of this section.

(f)(1) Uniformed members of the Metropolitan Police Department at the rank of Inspector and above shall not receive overtime compensation for work performed in excess of a 40-hour administrative workweek, excluding rollcall.

(2)(A) Except as provided in subparagraph (B) of this paragraph, uniformed members of the Fire and Emergency Medical Services Department at the rank of Assistant Fire Chief and above shall not receive overtime compensation for work performed in excess of 40 hours in an administrative workweek and in excess of 48 hours in a workweek for those uniformed members of the Fire and Emergency Medical Services Department at the rank of Assistant Fire Chief and above in the Firefighting Division.

(B) For fiscal years 2011 and 2012, uniformed members of the Fire and Emergency Medical Services Department at the rank of Battalion Fire Chief and above shall not receive overtime compensation for work performed in excess of 40 hours in an administrative workweek and in excess of 48 hours in a workweek for those uniformed members of the Fire and Emergency Medical Services Department at the rank of Battalion Fire Chief and above in the Firefighting Division.

(3) Uniformed members of the Metropolitan Police Department at the rank of Inspector and above and uniformed members of the Fire and Emergency Medical Services Department at the rank of Assistant Fire Chief and above shall not be suspended for disciplinary actions for less than a full pay period.

(4)(A) For fiscal years 2011 and 2012, and except as provided in subparagraph (B) of this paragraph, no officer or member of the Fire and Emergency Medical Services Department who is authorized to receive overtime compensation under this subsection may earn overtime in excess of \$20,000 in a fiscal year.

(B) This paragraph shall not apply to a member of the Fire and Emergency Medical Services Department who is classified as a Heavy Mobile Equipment Mechanic or a Fire Arson Investigator Armed (Canine Handler).

(Mar. 3, 1979, D.C. Law 2-139, § 1103, 25 DCR 5740; Sept. 16, 1980, D.C. Law 3-101, § 2, 27 DCR 3628; Mar. 4, 1981, D.C. Law 3-130, § 2(b), 28 DCR 277; Mar. 16, 1982, D.C. Law 4-78, § 8(a), 29 DCR 49; Mar. 13, 1985, D.C. Law 5-140, § 2, 31 DCR 5755; Oct. 5, 1985, D.C. Law 6-43, § 2(a), 32 DCR 4484; July 24, 1986, D.C. Law 6-126, § 2, 33 DCR 3211; July 24, 1986, D.C. Law

6-127, § 2, 33 DCR 3213; Sept. 13, 1986, D.C. Law 6-142, § 2, 33 DCR 4369; Mar. 2, 1991, D.C. Law 8-190, § 2(a), 37 DCR 6721; July 13, 1991, D.C. Law 9-12, § 2(a), 38 DCR 3376; Nov. 25, 1993, D.C. Law 10-65, § 201, 40 DCR 7351; July 23, 1994, D.C. Law 10-136, § 5, 41 DCR 3006; Sept. 22, 1994, D.C. Law 10-172, § 2, 41 DCR 5152; May 16, 1995, D.C. Law 10-255, § 2(a), 41 DCR 5193; June 10, 1998, D.C. Law 12-124, §§ 101(n)(2), 101(n)(3), 45 DCR 2464; Apr. 12, 2000, D.C. Law 13-91, § 103(o), 47 DCR 520; Oct. 3, 2001, D.C. Law 14-28, § 3702, 48 DCR 6981; Oct. 19, 2002, D.C. Law 14-213, § 3(h), (i), 49 DCR 8140; Dec. 7, 2004, D.C. Law 15-207, § 2, 51 DCR 8779; Mar. 26, 2008, D.C. Law 17-135, § 2(a), 55 DCR 1683; Sept. 24, 2010, D.C. Law 18-223, § 3022, 57 DCR 6242; Sept. 14, 2011, D.C. Law 19-21, § 3012, 58 DCR 6226.)

Cross references. — Retirement board members, exemptions, see § 1-711.

Section references. — This section is referred to in §§ 1-611.04, 1-611.05, 1-611.11 and 1-617.17.

Prior Codifications. — 1981 Ed., § 1-612.3.

1973 Ed., § 1-341.3.

Effect of amendments. — D.C. Law 13-91, in the introductory portion of subsec. (a), inserted “Legal.”

D.C. Law 14-28 added subsec. (f).

D.C. Law 14-213, in subsec. (a), substituted “Excepted, and the Management Supervisory Services” for “and the Excepted Services”; and repealed par (6) of subsec. (a).

D.C. Law 15-207, in the second sentence of subsec. (b), inserted “5 U.S.C. § 8331,” following “received by the reemployed individual pursuant to”.

D.C. Law 17-135 added subsec. (a)(7).

D.C. Law 18-223 rewrote subsec. (f)(2); and added subsec. (f)(4). Prior to amendment, subsec. (f)(2) read as follows: “(2) Uniformed members of the Fire and Emergency Medical Services Department at the rank of Assistant Fire Chief and above shall not receive overtime compensation for work performed in excess of 40 hours in an administrative workweek and in excess of 48 hours in a workweek for those uniformed members of the Fire and Emergency Medical Services Department at the rank of Assistant Fire Chief and above in the Firefighting Division.”

D.C. Law 19-21, in subsec. (f)(2)(B), substituted “For fiscal years 2011 and 2012” for “For fiscal year 2011”; and rewrote subsec. (f)(4), which formerly read:

“(4) For fiscal year 2011, no officer or member of the Fire and Emergency Medical Services Department who is authorized to receive overtime compensation under this subsection may earn overtime in excess of \$20,000 in the fiscal year.”

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(a) of Comprehensive Merit Personnel

Act Pay Limit Temporary Amendment Act of 1997 (D.C. Law 12-36, October 23, 1997, law notification 44 DCR 6554).

For temporary (225 day) amendment of section, see § 2 of Comprehensive Merit Personnel Act Annuity Offset Temporary Amendment Act of 1997 (D.C. Law 12-46, February 26, 1998, law notification 45 DCR 1507).

For temporary (225 day) amendment of section, see § 2(a) of Operation Enduring Freedom Active Duty Pay Differential Temporary Amendment Act of 2002 (D.C. Law 14-113, April 13, 2002, law notification 49 DCR 4061).

For temporary (225 day) amendment of section, see § 2(a) of Operation Enduring Freedom Active Duty Pay Differential Extension Temporary Act of 2002 (D.C. Law 14-247, March 25, 2003, law notification 50 DCR 2760).

For temporary (225 day) amendment of section, see § 2(a) of Operation Enduring Freedom and Operation Iraqi Freedom Active Duty Pay Differential Extension Temporary Amendment Act of 2003 (D.C. Law 15-23, July 22, 2003, law notification 50 DCR 6093).

For temporary (225 day) amendment of section, see § 2(a) of Operation Enduring Freedom and Operation Iraqi Freedom Active Duty Pay Differential Extension Temporary Amendment Act of 2004 (D.C. Law 15-158, May 18, 2004, law notification 51 DCR 5698).

For temporary (225 day) amendment of section, see § 2 of District Government Reemployed Annuitant Offset Alternative Temporary Amendment Act of 2004 (D.C. Law 15-317, April 8, 2005, law notification 52 DCR 4706).

For temporary (225 day) amendment of section, see § 2(a) of Operation Enduring Freedom and Operation Iraqi Freedom Active Duty Pay Differential Extension Second Temporary Act of 2004 (D.C. Law 15-323, April 8, 2005, law notification 52 DCR 4712).

Section 2(a) of D.C. Law 16-64 added par. (a)(7) to read as follows:

“(7)(A) Any full-time permanent, term, or TAPER District government employee who serves in a reserve component of the United States Armed Forces and who has been or will

be called to active duty as a result of Operation Enduring Freedom, or in preparation for or as a result of Operation Iraqi Freedom, shall receive, upon application and approval, an amount that equals the difference in compensation between the employee's District government basic pay and the employee's basic military pay. This amount shall not be considered as basic pay for any purpose. This amount shall be paid for any period following the formal inception of Operation Enduring Freedom in 2001, any period following the beginning of the preparation for Operation Iraqi Freedom in 2002 and 2003, or for any period following the formal inception of Operation Iraqi Freedom in 2003, during which the employee is carried in a non-pay status, from the time the employee is called to active duty until the employee is released from active duty occasioned by any of these military conflicts.

“(B) The Mayor shall issue rules within 30 days of July 22, 2003 to implement the provisions of this paragraph.”

Section 4(b) of D.C. Law 16-64 provided that the act shall expire after 225 days of its having taken effect.

Section 2(a) of D.C. Law 16-299 added a new par. (7) to subsec. (a) to read as follows:

“(7)(A) Any full-time permanent, term, or TAPER District government employee who serves in a reserve component of the United States Armed Forces and who has been or will be called to active duty as a result of Operation Enduring Freedom, or in preparation for or as a result of Operation Iraqi Freedom, shall receive, upon application and approval, an amount that equals the difference in compensation between the employee's District government basic pay and the employee's basic military pay. This amount shall not be considered as basic pay for any purpose. This amount shall be paid for any period following the formal inception of Operation Enduring Freedom in 2001, any period following the beginning of the preparation for Operation Iraqi Freedom in 2002 and 2003, or for any period following the formal inception of Operation Iraqi Freedom in 2003, during which the employee is carried in a non-pay status, from the time the employee is called to active duty until the employee is released from active duty occasioned by any of these military conflicts.

“(B) The Mayor shall issue rules within 30 days of July 22, 2003 to implement the provisions of this paragraph.”

Section 4(b) of D.C. Law 16-299 provided that the act shall expire after 225 days of its having taken effect.

Section 2(a) of D.C. Law 17-101 added subsec. (a)(7) to read as follows:

“(7)(A) Any full-time permanent, term, or TAPER District government employee who serves in a reserve component of the United

States Armed Forces and who has been or will be called to active duty as a result of Operation Enduring Freedom, or in preparation for or as a result of Operation Iraqi Freedom, shall receive, upon application and approval, an amount that equals the difference in compensation between the employee's District government basic pay and the employee's basic military pay. This amount shall not be considered as basic pay for any purpose. This amount shall be paid for any period following the formal inception of Operation Enduring Freedom in 2001, any period following the beginning of the preparation for Operation Iraqi Freedom in 2002 and 2003, or for any period following the formal inception of Operation Iraqi Freedom in 2003, during which the employee is carried in a non-pay status, from the time the employee is called to active duty until the employee is released from active duty occasioned by any of these military conflicts.

“(B) The Mayor shall issue rules to implement the provisions of this paragraph.”

Section 5(b) of D.C. Law 17-101 provided that the act shall expire after 225 days of its having taken effect.

Section 2 of D.C. Law 18-122 amended section 1281 of D.C. Law 18-111 to read as follows:

“Sec. 1281. For fiscal year 2010, no funds shall be used to support the categories of special awards pay (comptroller subcategory 0137) or bonus pay (comptroller subcategory 0138); provided, that funds may be used to provide incentive awards under section 1901 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-619.01).”

Section 4(b) of D.C. Law 18-122 provided that the act shall expire after 225 days of its having taken effect.

Section 2 of D.C. Law 18-187 amended section 1281 of D.C. Law 18-111 to read as follows:

“Sec. 1281. Restrictions on special awards pay or bonus pay.

“(a) For Fiscal Year 2010, no funds shall be used to support the categories of special awards pay or bonus pay; provided, that funds may be used to pay:

“(1) Retirement awards;

“(2) Hiring bonuses for difficult-to-fill positions;

“(3) Additional income allowances for difficult-to-fill positions;

“(4) Agency awards or bonuses funded by private grants or donations;

“(5) Safe driving awards;

“(6) Suggestion/invention awards; or

“(7) Any other award/bonus authorized by an existing contract or collective bargaining agreement that was entered into prior to the effective date of this subtitle.

“(b) No special awards pay or bonus pay shall be paid to a subordinate agency head or an assistant or deputy agency head under this section unless required by an existing contract that was entered into prior to the effective date of this subtitle.”

Section 4(b) of D.C. Law 18-187 provided that the act shall expire after 225 days of its having taken effect.

Temporary Addition of Section. — For temporary (225 day) addition, see § 2(b) of Comprehensive Merit Personnel Act Pay Limit Temporary Amendment Act of 1997 (D.C. Law 12-36, October 23, 1997, law notification 44 DCR 6554).

Section 2(b) of D.C. Law 12-36 was amended by § 61 of D.C. Law 12-81.

Emergency legislation. — For temporary amendment of section, § 2 of the Comprehensive Merit Personnel Act Annuity Offset Emergency Amendment Act of 1997 (D.C. Act 12-123, August 1, 1997, 44 DCR 4652), and § 2 of the Comprehensive Merit Personnel Act Annuity Offset Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-183, October 30, 1997, 44 DCR 6958).

For temporary amendment of section, see § 2(a) of the Comprehensive Merit Personnel Act Pay Limit Emergency Amendment Act of 1997 (D.C. Act 12-115, July 18, 1997, 44 DCR 4501), § 2(a) of the Comprehensive Merit Personnel Act Pay Limit Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-179, October 30, 1997, 44 DCR 6948), and § 2(a) of the Comprehensive Merit Personnel Act Pay Limit Emergency Amendment Act of 1998 (D.C. Act 12-378, June 5, 1998, 45 DCR 4465).

For temporary addition of § 1-612.3a 1981 Ed., § 2(b) of the Comprehensive Merit Personnel Act Pay Limit Emergency Amendment Act of 1997 (D.C. Act 12-115, July 18, 1997, 44 DCR 4501), § 2(b) of the Comprehensive Merit Personnel Act Pay Limit Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-179, October 30, 1997, 44 DCR 6948), and § 2(b) of the Comprehensive Merit Personnel Act Pay Limit Emergency Amendment Act of 1998 (D.C. Act 12-378, June 5, 1998, 45 DCR 4465).

For temporary (90-day) amendment of section, see § 2(e) of the Legal Services Clarification and Technical Emergency Amendment Act of 1999 (D.C. Act 13-203, December 8, 1999, 46 DCR 10456).

For temporary (90-day) amendment of section, see § 2(e) of the Legal Services Clarification and Technical Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-293, March 7, 2000, 47 DCR 2063).

For temporary (90 day) amendment of section, see §§ 2 and 3 of Police and Fire Senior Management Overtime Emergency Amend-

ment Act of 2001 (D.C. Act 14-84, July 9, 2001, 48 DCR 6371).

For temporary (90 day) amendment of section, see §§ 2(a) and 3 of Operation Enduring Freedom Active Duty Pay Differential Emergency Amendment Act of 2001 (D.C. Act 14-225, January 8, 2002, 49 DCR 664).

For temporary (90 day) amendment of section, see § 2(a) of Operation Enduring Freedom Active Duty Pay Differential Extension Emergency Act of 2002 (D.C. Act 14-498, October 23, 2002, 49 DCR 9795).

For temporary (90 day) amendment of section, see § 2(a) of Operation Enduring Freedom Active Duty Pay Differential Extension Congressional Review Emergency Act of 2003 (D.C. Act 15-16, February 24, 2003, 50 DCR 1944).

For temporary (90 day) amendment of section, see § 2(a) of Operation Enduring Freedom and Iraqi Freedom Active Duty Pay Differential Extension Emergency Amendment Act of 2003 (D.C. Act 15-74, April 16, 2003, 50 DCR 3619).

For temporary (90 day) amendment of section, see § 2(a) of Operation Enduring Freedom and Operation Iraqi Freedom Active Duty Pay Differential Extension Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-131, July 29, 2003, 50 DCR 6845).

For temporary (90 day) amendment of section, see § 2(a) of Operation Enduring Freedom and Operation Iraqi Freedom Active Duty Pay Differential Extension Emergency Amendment Act of 2004 (D.C. Act 15-357, February 19, 2004, 51 DCR 2574).

For temporary (90 day) amendment of section, see § 2 of District Government Reemployed Annuitant Offset Alternative Emergency Amendment Act of 2004 (D.C. Act 15-623, November 30, 2004, 52 DCR 1123).

For temporary (90 day) amendment of section, see § 2(a) of Operation Enduring Freedom and Operation Iraqi Freedom Active Duty Pay Differential Extension Second Emergency Amendment Act of 2004 (D.C. Act 15-646, December 29, 2004, 52 DCR 233).

For temporary (90 day) amendment of section, see § 2 of District Government Reemployed Annuitant Offset Alternative Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-44, February 22, 2005, 52 DCR 3051).

For temporary (90 day) amendment of section, see § 2(a) of Operation Enduring Freedom and Operation Iraqi Freedom Active Duty Pay Differential Extension Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-57, March 17, 2005, 52 DCR 3180).

For temporary (90 day) amendment of section, see § 2(a) of Operation Enduring Freedom and Operation Iraqi Freedom Active Duty Pay Differential Extension Emergency Amendment Act of 2005 (D.C. Act 16-205, November 17, 2005, 52 DCR 10522).

For temporary (90 day) amendment of section, see § 2(a) of Operation Enduring Freedom and Operation Iraqi Freedom Active Duty Pay Differential Extension Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-298, February 27, 2006, 53 DCR 1877).

For temporary (90 day) amendment of section, see § 2(a) of Operation Enduring Freedom and Operation Iraqi Freedom Active Duty Pay Differential Extension Emergency Amendment Act of 2006 (D.C. Act 16-516, October 25, 2006, 53 DCR 9099).

For temporary (90 day) amendment of section, see § 2(a) of Operation Enduring Freedom and Operation Iraqi Freedom Active Duty Pay Differential Extension Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-2, January 16, 2007, 54 DCR 1436).

For temporary (90 day) amendment of section, see § 2(a) of Operation Enduring Freedom and Operation Iraqi Freedom Active Duty Pay Differential Extension Emergency Amendment Act of 2007 (D.C. Act 17-143, October 17, 2007, 54 DCR 10745).

For temporary (90 day) addition, see § 1281 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section 1281 of Fiscal Year 2010 Budget Support Act of 2009 and Fiscal Year 2010 Budget Support Second Emergency Act of 2009, see §§ 2, 3 of Retirement Incentive Emergency Amendment Act of 2009 (D.C. Act 18-254, December 22, 2009, 57 DCR 40).

For temporary (90 day) amendment of section, see § 1281 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

For temporary (90 day) addition of section, see § 2 of Bonus and Special Pay Clarification Emergency Amendment Act of 2010 (D.C. Act 18-364, April 2, 2010, 57 DCR 3164).

For temporary (90 day) amendment of section, see § 3022 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

For temporary (90 day) amendment of § 1026 and addition of § 1143 of D.C. Law 18-223, see § 112 of Fiscal Year 2011 Supplemental Budget Support Emergency Act of 2010 (D.C. Act 18-694, January 19, 2011, 58 DCR 662).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 3-101. — Law 3-101 was introduced in Council and assigned Bill No. 3-292, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 17, 1980 and

July 1, 1980, respectively. Signed by the Mayor on July 16, 1980, it was assigned Act No. 3-223 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-130. — For legislative history of D.C. Law 3-130, see Historical and Statutory Notes following § 1-611.14.

Legislative history of Law 4-78. — Law 4-78 was introduced in Council and assigned Bill No. 4-326, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1981 and November 24, 1981, respectively. Signed by the Mayor on December 15, 1981, it was assigned Act No. 4-126 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-43. — Law 6-43 was introduced in Council and assigned Bill No. 6-68, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 25, 1985 and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-61 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-126. — Law 6-126 was introduced in Council and assigned Bill No. 6-374, which was referred to the Committee Government Operations and reassigned to the Committee of the Whole. The Bill was adopted on first and second readings on April 29, 1986 and May 13, 1986, respectively. Signed by the Mayor on May 16, 1986, it was assigned Act No. 6-162 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-127. — Law 6-127 was introduced in Council and assigned Bill No. 6-426, which was retained by Council. The Bill was adopted on first and second readings on April 15, 1986 and April 29, 1986, respectively. Signed by the Mayor on May 16, 1986, it was assigned Act No. 6-163 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-142. — Law 6-142 was introduced in Council and assigned Bill No. 6-427, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 10, 1986 and June 24, 1986, respectively. Signed by the Mayor on July 8, 1986, it was assigned Act No. 6-184 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-190. — For legislative history of D.C. Law 8-190, see Historical and Statutory Notes following § 1-621.14.

Legislative history of Law 9-12. — Law 9-12 was introduced in Council and assigned Bill No. 9-149, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on

April 9, 1991, and May 7, 1991, respectively. Signed by the Mayor on May 17, 1991, it was assigned Act No. 9-30 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-65. — Law 10-65, the “Omnibus Spending Reduction Act of 1993,” was introduced in Council and assigned Bill No. 10-323, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on July 21, 1993, and September 21, 1993, respectively. Signed by the Mayor on October 6, 1993, it was assigned Act No. 10-120 and transmitted to both Houses of Congress for its review. D.C. Law 10-65 became effective on November 25, 1993.

Legislative history of Law 10-136. — Law 10-136, the “Retired Police Officer Public Schools Security Personnel Deployment Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-113, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 12, 1994, and May 3, 1994, respectively. Signed by the Mayor on May 18, 1994, it was assigned Act No. 10-241 and transmitted to both Houses of Congress for its review. D.C. Law 10-136 became effective on July 23, 1994.

Legislative history of Law 10-172. — Law 10-172, the “Comprehensive Merit Personnel Reemployed Annuitant Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-571, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-292 and transmitted to both Houses of Congress for its review. D.C. Law 10-172 became effective on September 22, 1994.

Legislative history of Law 10-255. — Law 10-255, the “Technical Amendments Act of 1994,” was introduced in Council and assigned Bill No. 10-673, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective on May 16, 1995.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-602.03.

Legislative history of Law 14-28. — For Law 14-28, see notes following § 1-604.06.

Legislative history of Law 14-213. — For Law 14-213, see notes following § 1-603.01.

Legislative history of Law 15-207. — Law 15-207, the “District Government Reemployed

Annuitant Offset Elimination Amendment Act of 2004”, was introduced in Council and assigned Bill No. 15-567, which was referred to the Committee of Government Operations. The Bill was adopted on first and second readings on June 29, 2004, and July 13, 2004, respectively. Signed by the Mayor on August 2, 2004, it was assigned Act No. 15-489 and transmitted to both Houses of Congress for its review. D.C. Law 15-207 became effective on December 7, 2004.

Legislative history of Law 17-135. — Law 17-135, the “Operation Enduring Freedom and Operation Iraqi Freedom Active Duty Pay Differential Amendment Act of 2008”, which was introduced in Council and assigned Bill No. 17-121 which was referred to the Committee on Workforce Development and Government Operations. The Bill was adopted on first and second readings on December 11, 2007, and January 8, 2008. Signed by the Mayor on February 5, 2008, it was assigned Act No. 17-286 and transmitted to both Houses of Congress for its review. D.C. Law 17-135 became effective on March 26, 2008.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 1-301.78.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 1-301.01.

Short title. — Short title: Section 1001 of D.C. Law 19-21 provided that subtitle A of title I of the act may be cited as “Bonus and Special Pay Limitation Act of 2011”.

Short title: Section 1021 of D.C. Law 18-223 provided that subtitle C of title I of the act may be cited as the “Within-Grade Salary Increases, Cost-of-Living Adjustments, and Salary and Benefits Schedules Act of 2010”.

Short title: Section 1141 of D.C. Law 18-223 provided that subtitle O of title I of the act may be cited as the “Bonus and Special Pay Limitation Act of 2010”.

Short title: Section 3011 of D.C. Law 19-21 provided that subtitle B of title III of the act may be cited as “FEMS Overtime Limitation Amendment Act of 2011”.

Effective date. — Section 10 of D.C. Law 4-78 provided that the amendment effected by § 8(a) shall be deemed to have taken effect on October 1, 1981, and no employee affected by subsection (a)(2), as amended by the act, shall suffer a reduction in pay.

References in text. — The “Retired Police Officer Public Schools Security Personnel Deployment Amendment Act of 1994”, referred to in (b), is D.C. Law 10-136, which is codified as this section, § 5-762, and § 5-723, and in notes to § 5-762 and this section.

Resolutions. — Resolution 17-903, the “Operation Enduring Freedom and Operation Iraqi Freedom Active Duty Pay Differential

Rulemaking Approval Resolution of 2008", was approved effective December 16, 2008.

Editor's notes. — Sections 1022 to 1027 of D.C. Law 18-223, as amended by section 112(a) of D.C. Law 18-370, provided:

"Sec. 1022. Definitions.

"For the purposes of this subtitle, the term:

"(1) 'Agency' means an agency, office, or instrumentality of the District government, including independent agencies and subordinate agencies, as such terms are defined in section 301(13) and (17) of the CMPA.

"(2) 'CMPA' means the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-601.01 et seq.).

"(3) 'Negotiated salary schedule' means a salary schedule specified in a collective bargaining agreement.

"(4) 'Negotiated salary, wage, and benefits provision' means the salary and benefits provided in a collective bargaining agreement.

"(5) 'Personnel authority' means an individual with the authority to administer all or part of a personnel management program as provided in sections 301(14) and 406 of the CMPA.

"(6) 'Within-grade salary increase' means the advancement of an employee's basic rate of pay to the next higher step or other increment within the same grade, class, or pay level based on quality or length of service, or both, without regard to whether the term 'within-grade salary increase' or another term is used to describe the advancement within the applicable compensation law or rule.

"Sec. 1023. Freeze of within-grade salary increases and cost-of-living adjustments.

"(a) Notwithstanding any other provision of law, rule, or collective bargaining agreement, an employee of an agency shall not receive a within-grade salary increase or a cost-of-living adjustment during the period from October 1, 2010, through September 30, 2011.

"(b) Time in a pay or non-pay status during the period from October 1, 2010 through September 30, 2011, shall not be considered creditable service for the purpose of computing an employee's length of service or waiting period for a within-grade salary increase under Title XI of the CMPA or other applicable law or rule.

"Sec. 1024. Maintenance of fiscal year 2010 salary schedules and benefits in fiscal year 2011.

"Notwithstanding any other provision of law, collective bargaining agreement, memorandum of understanding, side letter, or settlement, whether specifically outlined or incorporated by reference, all fiscal year 2010 salary schedules shall be maintained during fiscal year 2011, and no increase in salary or benefits, including increases in negotiated salary, wage, and benefits provisions and negotiated salary sched-

ules, shall be provided in fiscal year 2011 from the fiscal year 2010 salary and benefits levels.

"Sec. 1025. Application to certain employees of the District of Columbia Public Schools.

"(a) Sections 1023 and 1024 shall not apply to employees of the District of Columbia Public Schools who are based at a local school or provide direct services to individual students if the Council approves a collective bargaining agreement between The Washington Teachers' Union, Local #6 of the American Federation of Teachers, and the District of Columbia Public Schools for the period October 1, 2007 through September 30, 2012.

"(b) Notwithstanding any other provision of law, no restriction on the use of funds to support the categories of special awards pay (comptroller subcategory 0137) or bonus pay (comptroller subcategory 0138) shall apply in fiscal year 2010 or fiscal year 2011 to employees of the District of Columbia Public Schools who are based at a local school or who provide direct services to individual students if the Council approves a collective bargaining agreement between The Washington Teachers' Union, Local #6 of the American Federation of Teachers, and the District of Columbia Public Schools for the period October 1, 2007 through September 30, 2012.

"(c) This section shall apply subject to the certification of the availability of funding by the Chief Financial Officer.

"Sec. 1026. Application to the Metropolitan Police Department and the Fire and Emergency Medical Services Department.

"Sections 1023 and 1024 shall not apply to employees of the Metropolitan Police Department, the Fire and Emergency Medical Services Department, and the University of the District of Columbia.

"Sec. 1027. Rules.

"To the extent authorized by the CMPA or other applicable law or rule, each personnel authority may issue rules to implement this subtitle."

Section 1141 of D.C. Law 18-223 provided that subtitle O of title I of the act may be cited as the 'Bonus and Special Pay Limitation Act of 2010'.

Section 1142 of D.C. Law 18-223 provided:

"Sec. 1142. Bonus and special pay limitations.

"(a) For fiscal year 2011, no funds shall be used to support the categories of special awards pay or bonus pay; provided, that funds may be used to pay:

"(1) Retirement awards;

"(2) Hiring bonuses for difficult-to-fill positions;

"(3) Additional income allowances for difficult-to-fill positions;

"(4) Agency awards or bonuses funded by private grants or donations;

"(5) Safe driving awards;

"(6) Suggestion/invention awards; or

"(7) Any other award/bonus required by an existing contract or collective bargaining agreement that was entered into prior to the effective date of this subtitle September 24, 2010."

"(b) No special awards pay or bonus pay shall be paid to a subordinate agency head or an assistant or deputy agency head unless required by an existing contract that was entered into prior to the effective date of this subtitle."

Section 112(b) of D.C. Law 18-370 added section 1143 of D.C. Law 18-223 to read as follows:

"Sec. 1143. Exemption. Section 1142 shall not apply to employees of the University of the District of Columbia."

Section 1002 of D.C. Law 19-21 provided:

"Sec. 1002. Bonus and special pay limitations.

"(a) For fiscal year 2012, no funds shall be used to support the categories of special awards pay or bonus pay; provided, that funds may be used to pay:

"(1) Retirement awards;

"(2) Hiring bonuses for difficult-to-fill positions;

"(3) Additional income allowances for difficult-to-fill positions;

"(4) Agency awards or bonuses funded by private grants or donations;

"(5) Safe driving awards;

"(6) Suggestion/invention awards; or

"(7) Any other award/bonus required by an existing contract or collective bargaining agreement that was entered into prior to October 1, 2010.

"(b) For fiscal year 2012, no special awards pay or bonus pay shall be paid to a subordinate agency head or an assistant or deputy agency head unless required by an existing contract that was entered into prior to October 1, 2010.

"(c) Notwithstanding any other provision of law, no restrictions on the use of funds to support the categories of special awards pay (comptroller subcategory 0137) or bonus pay (comptroller subcategory 0138) shall apply in fiscal year 2012 to employees of the District of Columbia Public Schools who are based at a local school or who provide direct services to individual students."

CASE NOTES

ANALYSIS

In general.
Stipends.

In general.

District of Columbia violated Fair Labor Standards Act's overtime provisions by substituting compensatory time off in lieu of monetary payments for overtime hours expended by police officers, absent provision in collective bargaining agreement or other agreement providing for such substitutions. Fair Labor Standards Act of 1938, §§ 3(c), 7(o), (o)(2), as amended, 29 U.S.C. §§ 203(c), 207(o), (o)(2); D.C. Code 1981, § 1-612.3(b, d); Portal-to-Portal Act of 1947, § 6(a), 29 U.S.C. § 255(a). D'Camera v. District of Columbia, 693 F.Supp. 1208, 1988 U.S. Dist. LEXIS 10115 (1988).

Collective bargaining agreement between District of Columbia and police officers, stating under provision entitled "Court Time Pay" that Department's current policy would remain in effect, allowed District to provide compensatory time off in lieu of monetary payments for overtime hours expended by officers for certain court appearances, but did not allow District to contravene Fair Labor Standards Act overtime provisions by substituting compensatory time off for overtime service hours not expended in court appearances. Fair Labor Standards Act of 1938, §§ 3(c), 7(o), (o)(2), as amended, 29 U.S.C. §§ 203(c), 207(o), (o)(2); D.C. Code 1981,

§ 1-612.3(b, d); Portal-to-Portal Act of 1947, § 6(a), 29 U.S.C. § 255(a). D'Camera v. District of Columbia, 693 F.Supp. 1208, 1988 U.S. Dist. LEXIS 10115 (1988).

Statute [5 U.S.C. § 8344] which sets forth federal formula for determining total compensation certain federal employees may receive from the Government did not preclude District of Columbia from reducing, by statute, salaries of retired federal employees who receive military pensions. D.C. Code 1981, §§ 1-201 et seq., 1-233(c)(1), 1-612.3, 1-612.3(b, c); 5 U.S.C. § 5532; U.S. Const. Art. 6, cl. 2. Barnes v. District of Columbia, 611 F. Supp. 130, 1985 U.S. Dist. LEXIS 19787 (1985).

District of Columbia statute [D.C. Code 1981, § 1-612.3(b)] reducing salaries of federal and District of Columbia annuitants employed by District did not impair contracts between federal government and retired military personnel who were employed by the District, assuming that the military retirees had contracts with federal government for pension benefits, and between the military retirees and the District, and thus, did not violate the Contract Clause of the United States Constitution [U.S. Const. Art. 1, § 10, cl. 1]. Barnes v. District of Columbia, 611 F. Supp. 130, 1985 U.S. Dist. LEXIS 19787 (1985).

Stipends.

The \$595 annual stipend under District of Columbia statute for detective sergeants was

part of plaintiffs' regular pay rate and had to be included in FLSA overtime calculation; District contended that stipend was not part of their basic compensation but rather was additional payment that should not be so included, but FLSA mandated that regular rate include all remuneration for employment paid to, or on

behalf of, employee unless it fell under one of eight expressly provided exclusions and District did not reference the exemptions, let alone argue that one of them applied to situation. *Figueroa v. District of Columbia*, 2012 WL 2367088 (2012).

§ 1-611.04. Compensation system for Career and Excepted Services — Established.

(a) The Mayor shall develop, in consultation with the Board of Education and the Board of Trustees of the University of the District of Columbia, a new compensation system for all employees in the Career, Legal, Excepted, and Management Supervisory Services. Any comments that the Board of Education or the Board of Trustees of the University of the District of Columbia wish to make on the proposed system shall be presented along with the proposed pay system submitted by the Mayor.

(b) This new system shall include, but need not be limited to, provisions for basic pay, pay increases based on quality and length of service, premium pay, allowances, and severance pay.

(c) The Mayor shall provide for appropriate consultations with employee organizations in the development of the new compensation system for Career Service employees.

(d) The Mayor shall submit any proposed new compensation system to the Council for approval under the provisions of § 1-611.06. The submission shall include proposed dates on which the new compensation system shall become effective.

(e) Until such time as a new compensation system is approved, the compensation system, including the salary and pay schedules, in effect on December 31, 1979, shall continue in effect: Provided, that pay adjustments shall be made in accordance with the policy stated in § 1-611.03.

(e-1) Until such time as the Metropolitan Police Department Excepted Service Sworn Employees' Compensation System is established, the Mayor may develop a pay schedule, to be limited to no more than 10 excepted service sworn employees, for Metropolitan Police Department Excepted Service sworn employees and submit it to the Council for approval in accordance with § 1-611.06.

(f) For the purpose of subsections (a) through (d) of this section, the term compensation system shall not include salary or pay schedules.

(g) An employee who is under indictment or who is charged by information with or who has been convicted of a felony related to his or her employment duties shall not be eligible for benefits under an Easy Out, Early Out, or similar Retirement Incentive Program; provided, that any employee who is ultimately acquitted or cleared of any charge which caused his ineligibility shall be eligible for all benefits as if that employee has never been indicted for or charged by information with a felony.

(h) For the purposes of this subchapter, the term "felony" means an offense that is punishable by a term of imprisonment that exceeds one year.

(Mar. 3, 1979, D.C. Law 2-139, § 1104, 25 DCR 5740; Mar. 4, 1981, D.C. Law 3-130, § 2(c), 28 DCR 277; Feb. 24, 1987, D.C. Law 6-177, § 3(m), 33 DCR 7241; Mar. 15, 1990, D.C. Law 8-94, § 2(a), 37 DCR 782; May 24, 1996, D.C. Law 11-122, § 2, 43 DCR 1540; Aug. 1, 1996, D.C. Law 11-152, § 302(l), 43 DCR 2978; Sept. 10, 1999, D.C. Law 13-27, § 2(a), 46 DCR 5315; Apr. 12, 2000, D.C. Law 13-91, § 103(p), 47 DCR 520; Oct. 19, 2002, D.C. Law 14-213, § 3(j), 49 DCR 8140.)

Section references. — This section is referred to in §§ 1-602.02, 1-603.01, and 1-611.06.

Prior Codifications. — 1981 Ed., § 1-612.4.

1973 Ed., § 1-341.4.

Effect of amendments. — D.C. Law 13-27 inserted subsec. (e-1).

D.C. Law 13-91, in subsec. (a), in the first sentence, inserted “Legal.”

D.C. Law 14-213, in subsec. (a), substituted “Excepted, and Management Supervisory Services” for “and Excepted Services”.

Temporary legislation. — For temporary (225 day) additions, see §§ 2, 3 of Retirement Incentive Temporary Act of 2000 (D.C. Law 13-162, October 4, 2000, law notification 47 DCR 8609).

Emergency legislation. — For temporary (90-day) amendment of section, see § 2(f) of the Legal Services Clarification and Technical Emergency Amendment Act of 1999 (D.C. Act 13-203, December 8, 1999, 46 DCR 10456).

For temporary (90-day) amendment of section, see § 2(f) of the Legal Services Clarification and Technical Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-293, March 7, 2000, 47 DCR 2063).

For temporary (90-day) amendment of section, see §§ 302 and 303 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see §§ 302, 303 and 305 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 3-130. — For legislative history of D.C. Law 3-130, see Historical and Statutory Notes following § 1-611.14.

Legislative history of Law 6-177. — For legislative history of D.C. Law 6-177, see Historical and Statutory Notes following § 1-601.02.

Legislative history of Law 8-94. — Law 8-94 was introduced in Council and assigned Bill No. 8-352, which was referred to the Com-

mittee of the Whole. The Bill was adopted on first and second readings on December 5, 1989, and December 19, 1989, respectively. Signed by the Mayor on January 11, 1990, it was assigned Act. No. 8-145 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-25. — Law 11-25, the “Merit Personnel Early Out Retirement Revisions Temporary Amendment Act of 1995,” was introduced in Council and assigned Bill No. 11-211. The Bill was adopted on first and second readings on April 4, 1995, and May 2, 1995, respectively. Signed by the Mayor on May 15, 1995, it was assigned Act No. 11-53 and transmitted to both Houses of Congress for its review. D.C. Law 11-25 became effective on July 14, 1995.

Legislative history of Law 11-122. — Law 11-122, the “Merit Personnel Early Out Retirement Revisions Amendment Act of 1996,” was introduced in Council and assigned Bill No. 11-226, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on February 6, 1996, and March, 1996, respectively. Signed by the Mayor on March 15, 1996, it was assigned Act No. 11-229 and transmitted to both Houses of Congress for its review. D. C. Law 11-122 became effective on May 24, 1996.

Legislative history of Law 11-152. — For legislative history of D.C. Law 11-152, see Historical and Statutory Notes following § 1-602.02.

Legislative history of Law 13-27. — For Law 13-27, see notes following § 1-609.03.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-602.03.

Legislative history of Law 14-213. — For Law 14-213, see notes following § 1-603.01.

Resolutions. — Resolution 14-53, the “District of Columbia Government Comprehensive Merit Personnel Act of 1978 Recruitment and Retention Incentives for the Child and Family Services Agency Compensation System Changes Emergency Approval Resolution of 2001”, was approved effective March 6, 2001.

Resolution 16-219, the “Excepted Service Employees Compensation System Changes Approval Resolution of 2005”, was approved effective July 6, 2005.

Resolution 16-321, the “Career and Excepted Service Non-union Employees Compensation

System Changes for Fire and Emergency Medical Services Department Non-bargaining Unit Battalion Chiefs, Deputy Chiefs, and Assistant Chiefs Approval Resolution of 2005", was approved effective October 11, 2005.

Resolution 16-322, the "Career Service, Excepted Service, and Management Supervisory Service Non-bargaining Unit Employees Pay Equity Compensation System Changes Approval Resolution of 2005", was approved effective October 11, 2005.

Editor's notes. — Repeal of § 3 of Law 6-177: Section 4(b) of D.C. Law 6-177 provided that the provisions of § 3 are repealed on the 1st day following the 36-month period after February 24, 1987.

Repeal of § 4(b) of Law 6-177: Section 3(b) of D.C. Law 8-74, effective March 15, 1990, provided that § 4(b) of D.C. Law 6-177 is repealed.

Disapproval of new compensation system for employees in Career and Excepted Services: Pursuant to Resolution 7-345, the "Establishment of the New Compensation System for Employees in the Career and Excepted Services Disapproval Resolution of 1988", effective November 15, 1988, the Council disapproved the Career and Excepted Services Compensation System submitted to Council by the Mayor on September 21, 1988.

District of Columbia Government Comprehensive Merit Personnel Act of 1978 Compensation System Changes Emergency Approval Resolution of 1991: Pursuant to Resolution 9-109, effective October 4, 1991, the Council approved, on an emergency basis, changes to the compensation system to authorize the Mayor to establish a retirement incentive program for certain District government employees.

Fiscal Year 1995 Spending Reduction Approval Emergency Resolution of 1995: Pursuant to Resolution 11-21, effective February 7, 1995, the Council approved, on an emergency basis, changes to the Career and Excepted Service compensation system to authorize the Mayor to extend the retirement incentive program for certain District government employees.

Sections 302, 303, and 305 of D.C. Law 13-172 provided:

"Sec. 302. Easy out retirement incentive.

"(a) Notwithstanding section 1106 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 ('CMPA') the Council adopts changes to the Career and Excepted Service compensation system under section 1104 of the CMPA, that authorize the Mayor to establish a retirement incentive program for certain District employees.

"(b) The changes to the compensation system are as follows:

"(1) The Mayor is authorized to establish an easy out retirement incentive program ('Easy

Out Program') which shall apply to eligible employees under the personnel authority of the Mayor, and employees of any other personnel authority that is under the pay authority of the Mayor if the personnel authority chooses to participate in the Easy Out Program.

"(2) The Easy Out Program may be implemented by the appropriate personnel authority at any time after the effective date of this act.

"(3) The Easy Out Program shall be limited to employees retiring under the optional retirement provisions of 5 U.S.C. § 8336(a), (b), or (f).

"(4) The Easy Out Program shall offer a retirement incentive of not more than 50% of an employee's annual rate of basic pay from the employee's salary or pay schedule which was in effect on April 9, 2000, not to exceed \$25,000, to be paid within one year of the employee's retirement.

"(5) Retirement incentive payments shall be prorated in the case of a part-time employee.

"(6) Retirement incentive payments shall not be considered basic pay for computing retirement entitlement, insurance entitlement, any category of premium pay entitlement, lump-sum leave, or any other entitlement that is computed on basic pay.

"(7) No incentive payment shall be paid to:

"(A) An employee retiring under the law enforcement or firefighter provisions of 5 U.S.C. § 8336(c), the discontinued service/involuntary retirement provisions of 5 U.S.C. § 8336(d)(1), or the disability retirement provisions of 5 U.S.C. § 8337;

"(B) An employee who is a reemployed annuitant under the provisions of 5 U.S.C. § 8344;

"(C) An employee who is in a critical position as defined by regulations promulgated by the Mayor;

"(D) An employee who is a sworn member of the Metropolitan Police Department or the Fire and Emergency Medical Services Department;

"(E) An employee who is under indictment or who is charged by information with or who has been convicted of a felony or who has been convicted after a plea of nolo contendere to a felony related to his or her employment duties; provided, that any employee who is ultimately acquitted or cleared of any charge that caused his or her ineligibility shall be eligible for all benefits as if that employee had never been indicted for or charged by information with a felony; or

"(F) An employee who, based on conduct related to his or her employment duties, has been convicted of a misdemeanor or who has plead guilty or has been convicted after a plea of nolo contendere to a misdemeanor; provided, that any employee who is ultimately acquitted or cleared of any charge that caused his or her ineligibility shall be eligible for all benefits as if

that employee had never been charged with a misdemeanor.

"(8) For the purposes of paragraph (7)(E) of this subsection, the term 'felony' means an offense that is punishable by a term of imprisonment that exceeds one year or a fine of at least \$1,000.

"(9) An employee who receives an incentive payment under the Easy Out Program shall not be eligible for reemployment with the District government for 5 years from the date of retirement, or hired or retained as a sole source consultant or personal services contractor for 5 years from the date of retirement.

"Sec. 303. Early out retirement incentive.

"(a) Notwithstanding section 1106 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 ('CMPA'), the Council adopts changes to the Career and Excepted Service compensation system under section 1104 of the CMPA, that authorize the Mayor to establish a retirement incentive program for certain District employees.

"(b) The changes to the compensation system are as follows:

"(1) The Mayor is authorized to establish an early out retirement incentive program ('Early Out Program') which shall apply to eligible employees under the personnel authority of the Mayor, and employees of any other personnel authority that is under the pay authority of the Mayor, if the personnel authority chooses to participate in the Early Out Program.

"(2) The Early Out Program may be implemented by the appropriate personnel authority at any time after the effective date of this act.

"(3) The Early Out Program shall be limited to employees retiring under the voluntary early out retirement provisions of 5 U.S.C. § 8336(d)(2).

"(4) The Early Out Program shall offer a retirement incentive of not more than 50% of an employee's annual rate of basic pay from the employee's salary or pay schedule which was in effect on April 9, 2000, not to exceed \$25,000, to be paid within one year of the employee's retirement.

"(5) Retirement incentive payments shall be prorated in the case of a part-time employee.

"(6) Retirement incentive payments shall not be considered basic pay for computing retirement entitlement, insurance entitlement, any

category of premium pay entitlement, lump-sum leave, or any other entitlement that is computed on basic pay.

"(7) No incentive payment shall be paid to:

"(A) An employee retiring under the law enforcement or firefighter provisions of 5 U.S.C. § 8336(c), the discontinued service/involuntary retirement provisions of 5 U.S.C. § 8336(d)(1), or the disability retirement provisions of 5 U.S.C. § 8337;

"(B) An employee who is a reemployed annuitant under the provisions of 5 U.S.C. § 8344;

"(C) An employee who is in a critical position as defined by regulations promulgated by the Mayor;

"(D) An employee who is a sworn member of the Metropolitan Police Department or the Fire and Emergency Medical Services Department;

"(E) An employee who is under indictment or who is charged by information with or who has been convicted of a felony or who has been convicted after a plea of nolo contendere to a felony related to his or her employment duties; provided, that any employee who is ultimately acquitted or cleared of any charge that caused his or her ineligibility shall be eligible for all benefits as if that employee had never been indicted for or charged by information with a felony; or

"(F) An employee who, based on conduct related to his or her employment duties, has been convicted of a misdemeanor or who has plead guilty or has been convicted after a plea of nolo contendere to a misdemeanor; provided, that any employee who is ultimately acquitted or cleared of any charge that caused his or her ineligibility shall be eligible for all benefits as if that employee had never been charged with a misdemeanor.

"(8) For the purposes of paragraph (7)(E) of this subsection, the term 'felony' means an offense that is punishable by a term of imprisonment that exceeds one year or a fine of at least \$1,000.

"(9) An employee who receives an incentive payment under the Early Out Program shall not be eligible for reemployment with the District government for 5 years from the date of retirement, or hired or retained as a sole source consultant or personal services contractor for 5 years from the date of retirement."

"Sec. 305. Sunset provision. This title shall expire on December 31, 2000."

CASE NOTES

In general.

Authority was vested in Court of Appeals to review the adoption by the city council of two pieces of emergency legislation amending the Comprehensive Merit Personnel Act to permit the mayor to take into consideration budgetary constraints due to limited appropriations or

revenues in authorizing a 5% pay increase for employees in the career and excepted services. D.C. Code 1981, §§ 1-162(3), 1-242(3), 1-601.1 et seq., 1-612.4(a), 1-612.5(d, e), 1-612.11(d, i); U.S. Const. Art. 1, § 8, cl. 1. *American Federation of Government Employees v. Barry*, 459 A.2d 1045, 1983 D.C. App. LEXIS 343 (1983).

Amendment of the Comprehensive Merit Personnel Act to permit the mayor to take into consideration budgetary constraints due to limited appropriations or revenues in adopting a 5% pay increase for employees in the career and excepted services neither abused nor exceeded counsel's emergency legislative authority and

was justified by perceived congressional reluctance to appropriate funds sufficient to meet greater pay raises. D.C. Code 1981, §§ 1-162(3), 1-242(3), 1-601.1 et seq., 1-612.4(a), 1-612.5(d, e), 1-612.11(d, i). American Federation of Government Employees v. Barry, 459 A.2d 1045, 1983 D.C. App. LEXIS 343 (1983).

§ 1-611.05. Compensation system for Career and Excepted Services — Periodic review.

(a) The Mayor, in consultation with the Board of Education and the Board of Trustees of the University of the District of Columbia, shall provide for a periodic review of the basic compensation system, in order to improve the system and provide continuing conformity with the policy established by § 1-611.03.

(b) These reviews of compensation shall include, but need not be limited to, review of the adequacy of the rates of basic pay.

(c) The Mayor shall provide for appropriate consultations with employee organizations of employees under his or her jurisdiction in the periodic reviews of the compensation system(s).

(d) The Mayor, in consultation with the personnel authorities named in subsection (a) of this section, shall consider, on an annual basis, changes in the compensation system or systems and in the salary and pay schedules under such system or systems, and shall submit adjustments, if any, to the Council pursuant to § 1-611.06. The submission to the Council shall include proposed dates on which the adjustments shall become effective.

(e) If, because of economic conditions, the pendency of collective bargaining, or budgetary constraints due to limited appropriations or revenues, the Mayor should, in any year, consider it inappropriate to submit a proposed change, or to make the adjustment in the salary or pay schedules pursuant to subsection (d) of this section, an alternative plan may be submitted with respect to such changes or adjustments as the Mayor considers appropriate with a statement of the reasons therefor.

(f) Repealed.

(Mar. 3, 1979, D.C. Law 2-139, § 1105, 25 DCR 5470; Mar. 4, 1981, D.C. Law 3-130, § 2(d), 28 DCR 277; Feb. 24, 1987, D.C. Law 6-177, § 3(n), 33 DCR 7241; Mar. 15, 1990, D.C. Law 8-94, § 2(b), 37 DCR 782; Aug. 1, 1996, D.C. Law 11-152, § 302(m), 43 DCR 2978; Mar. 26, 1999, D.C. Law 12-175, § 2201, 45 DCR 7193.)

Section references. — This section is referred to in §§ 1-611.06 and 1-623.41.

Prior Codifications. — 1981 Ed., § 1-612.5.

1973 Ed., § 1-341.5.

Emergency legislation. — For temporary amendment of section, see § 2 of the Police Officer Pay Increase Emergency Amendment Act of 1997 (D.C. Act 12-142, July 18, 1997, 44

DCR 4369), and § 2 of the Police Officers Pay Increase Emergency Amendment Act of 1998 (D.C. Act 12-408, July 13, 1998, 45 DCR 4837).

For temporary amendment of section, see § 2 of the Department of Corrections Pay Increase Emergency Amendment Act of 1998 (D.C. Act 12-327, April 24, 1998, 45 DCR 2794).

For temporary amendment of section, see § 2 of the Career, Educational, and Excepted Ser-

vice Nonunion Employees Salary Increase Emergency Amendment Act of 1998 (D.C. Act 12-377, June 5, 1998, 45 DCR 4463).

For temporary amendment of section, see § 2(b) of the Career and Excepted Services Nonunion Metropolitan Police Officers Salary Change and Excepted Service Positions Authorization Emergency Amendment Act of 1998 (D.C. Act 12-381, June 22, 1998, 45 DCR 4474).

For temporary amendment of section, see § 1801 of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), and § 1801 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

For temporary (90-day) amendment of section, see § 1801 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1999 (D.C. Act 13-41, March 31, 1999, 46 DCR 3446).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 3-130. — For legislative history of D.C. Law 3-130, see Historical and Statutory Notes following § 1-611.14.

Legislative history of Law 6-177. — For legislative history of D.C. Law 6-177, see Historical and Statutory Notes following § 1-601.02.

Legislative history of Law 8-94. — For legislative history of D.C. Law 8-94, see Historical and Statutory Notes following § 1-611.04.

Legislative history of Law 11-152. — For legislative history of D.C. Law 11-152, see Historical and Statutory Notes following § 1-602.02.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Editor's notes. — Repeal of § 3 of Law 6-177: Section 4(b) of D.C. Law 6-177 provided that the provisions of § 3 are repealed on the 1st day following the 36-month period after February 24, 1987.

Repeal of § 4(b) of Law 6-177: Section 3(b) of D.C. Law 8-74, effective March 15, 1990, provided that § 4(b) of D.C. Law 6-177 is repealed.

Metropolitan Police Department pay and benefit performance: Pursuant to §§ 2 and 3 of D.C. Law 6-145, the "Metropolitan Police Department Pay and Benefit Conformance Act of 1986", effective September 13, 1986, the Council approved changes to the compensation system for Career and Executive Service employees not covered by collective bargaining.

Sections 2 and 3 of D.C. Law 6-128, effective July 24, 1986, had also approved changes to the compensation system for Career and Executive Service employees not covered by collective bargaining. Section 4(b) of D.C. Law 6-128 provided that the act shall expire on the 180th day of its having taken effect.

D.C. Fire Department Compensation and Salary Schedule Adjustment: Pursuant §§ 2-4 of D.C. Law 7-192, the "D.C. Fire Department Compensation System and Salary Schedule Adjustment Act of 1988", effective March 6, 1989, the Council approved changes to the compensation system and salary schedule for uniformed members of the Fire Department of the District of Columbia not covered by collective bargaining.

Sections 2-4 of D.C. Law 7-196, effective March 16, 1989, had also approved changes to the compensation system and salary schedule for uniformed members of the Fire Department of the District of Columbia not covered by collective bargaining. Section 5(b) provided that the act shall expire on the 225th day of its having taken effect.

Approval of continued payment of the base retention differential and retentive incentive to non-union uniformed members of Police force and Fire Department: Pursuant to Resolution 8-255, the "Base Retention Differential & Retention Incentive Payment Continuation Emergency Resolution of 1990", effective July 27, 1990, the Council approved the continued payment of the base retention differential and retention incentive to non-union uniformed members of the Police force and Fire Department who are receiving or establish eligibility to receive the base retention differential or retention incentive on or before October 6, 1990.

CASE NOTES

Review.

In reviewing the adoption by the city council of two pieces of emergency legislation amending the Comprehensive Merit Personnel Act, the Court of Appeals was to give deference to the counsel's definition and determination of "emergency circumstances" and was to seek only to assure itself that the act was facially valid, that is, consistent with the legislative

authority of the council in partnership with Congress. D.C. Code 1981, §§ 1-162(3), 1-242(3), 1-601.1 et seq., 1-612.4(a), 1-612.5(d, e), 1-612.11(d, i); U.S. Const. Art. 1, § 8, cl. 1. *American Federation of Government Employees v. Barry*, 459 A.2d 1045, 1983 D.C. App. LEXIS 343 (1983).

Authority was vested in Court of Appeals to review the adoption by the city council of two

pieces of emergency legislation amending the Comprehensive Merit Personnel Act to permit the mayor to take into consideration budgetary constraints due to limited appropriations or revenues in authorizing a 5% pay increase for employees in the career and excepted services.

D.C. Code 1981, §§ 1-162(3), 1-242(3), 1-601.1 et seq., 1-612.4(a), 1-612.5(d, e), 1-612.11(d, i); U.S. Const. Art. 1, § 8, cl. 1. *American Federation of Government Employees v. Barry*, 459 A.2d 1045, 1983 D.C. App. LEXIS 343 (1983).

§ 1-611.06. Compensation system for Career and Excepted Services — Review by the Council of the District of Columbia.

(a) If the Council by resolution approves, without revision, the new compensation system or systems, or any later changes in such system or systems or in the salary or pay schedules under the system or systems proposed in accordance with § 1-611.04 or § 1-611.05, the schedules shall become effective on the dates specified in the schedule submitted by the Mayor as provided in subsection (d) of § 1-611.05. If the Council takes no action on the Mayor's proposed change within 60 calendar days of the submission thereof, such change shall be deemed to have been approved by the Council on the day next following the expiration of this 60-day period. The 60 calendar days for Council review shall not include days that pass during a recess of the Council.

(b) If the Council revises the proposal, it shall return the proposal with its revisions to the Mayor. If the Mayor concurs in the revisions, the provisions of the compensation plan as revised shall become effective on the dates specified by the Council in the resolution revising the compensation plan, as provided in subsection (a) of this section.

(c) If the Mayor does not concur in any 1 or more of the revisions recommended by the Council, including the Council's recommendation as to the dates on which the pay changes shall become effective, the Mayor shall return the revisions within 10 days to the Council, with a statement of the Mayor's reasons for not concurring. If the Council, by a two-thirds vote of the members present and voting, adopts a resolution insisting upon any 1 or more of the original revisions, the Council shall return the proposal and the revisions upon which the Council insists to the Mayor within 10 days of the Council's receipt of the Mayor's statement of reasons for not concurring in the revisions recommended by the Council. If any revisions insisted upon by the Council, including the Council's recommendation as to the dates on which the pay changes should become effective, shall result in a greater cost to the District government than the Mayor's original proposal, the Council shall adopt an act to provide a source of funding to cover the increased cost. The pay provisions of the compensation plan so adopted shall become effective on the dates specified by the Council in the resolution revising the new compensation system. If the two-thirds vote does not prevail, or the Council does not act within 10 days of the Council's receipt of the Mayor's statement of reasons for not concurring in the revisions recommended by the Council, the Mayor's original proposal, with the revisions proposed by the Council in which the Mayor has concurred, shall become effective. The 10 days for Council review shall not include Saturdays, Sundays, legal holidays, and days of Council recess.

(d) Retroactive pay is payable by reason of an increase in the salary or pay schedules under this section only where:

(1) The individual is in the service of the District of Columbia government on the date of final action by the Council on the increase; or

(2) The individual retired or died during the period beginning on the effective date of the increase and ending on the date of final action by the Council on the increase, and only for the services performed during that period.

(e) Repealed.

(f)(1) Persons newly hired by the District government may receive an initial rate of pay at any amount up to the midpoint of the grade or pay level for the position.

(2) The District government may pay new hires above the midpoint of the grade or pay level for that position only if the agency director or other appointing official explains the reasons justifying the salary in a memorandum that shall be filed in the employee's official personnel folder.

(Mar. 3, 1979, D.C. Law 2-139, § 1106, 25 DCR 5740; Mar. 4, 1981, D.C. Law 3-130, § 2(e), 28 DCR 277; Aug. 1, 1985, D.C. Law 6-15, § 7(c), 32 DCR 3570; Mar. 15, 1990, D.C. Law 8-94, § 2(c), 37 DCR 782; Mar. 14, 2012, D.C. Law 19-115, § 2(h), 59 DCR 461.)

Section references. — This section is referred to in §§ 1-608.58, 1-609.03, 1-611.04, 1-611.05, and 1-623.41.

Prior Codifications. — 1981 Ed., § 1-612.6.

1973 Ed., § 1-341.6.

Effect of amendments. — D.C. Law 19-115 added subsec. (f).

Temporary legislation. — Section 2 of D.C. Law 17-134 provided as follows:

"Sec. 2. Easy out retirement incentive.

"(a) Notwithstanding section 1106 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-611.06) ('CMPA'), the Council of the District of Columbia adopts changes to the compensation system for the Career, Excepted, Legal, and Management Supervisory Services under section 1104 of the CMPA, that authorize the Mayor to establish a retirement incentive program for certain District employees.

"(b) The changes to the compensation system are as follows:

"(1) The Mayor is authorized to establish an easy out retirement incentive program ('Easy Out Program') for eligible District of Columbia Public Library ('DCPL') employees under its independent personnel authority and the pay authority of the Mayor. The Easy Out Program may be implemented by DCPL's personnel authority during fiscal year 2008.

"(2) The Easy Out Program shall be limited to employees who are:

"(A) Retiring under the optional retirement provisions of 5 U.S.C. § 8336(a), (b), or (f); and

"(B) Who are eligible to retire with Social Security (minimum age 62).

"(3) The Easy Out Program shall offer a retirement incentive of \$500 for each full year of creditable service towards retirement. The retirement incentive will be paid in a lump sum to be paid within fiscal year 2008.

"(4) Retirement incentive payments shall not be considered basic pay for computing retirement entitlement, insurance entitlement, any category of premium pay entitlement, lump-sum leave, or any other entitlement that is computed on basic pay.

"(5) No incentive pay shall be paid to:

"(A) An employee who retires under the discontinued service/involuntary retirement provisions of 5 U.S.C. § 8336(d)(1) of the Civil Service Retirement System, or the disability retirement provisions of 5 U.S.C. § 8337;

"(B) A person employed as a reemployed annuitant under the provisions of 5 U.S.C. § 8344 who separates from District service, whether or not he or she applies for a recomputation of his or her annuity;

"(C) An employee who is receiving disability compensation under Title XXIII of the CMPA who retires and who elects to remain on disability compensation in lieu of retirement annuity;

"(D) An employee serving under a time-limited appointment;

"(E) An employee who receives a proposal or a final decision notice of removal for cause;

"(F)(i) An employee who is under indictment or who is charged by information with or who has been convicted of a felony or who has been

convicted after pleas of *nolo contendere* to a felony related to his or her employment duties; provided, that any employee who ultimately is acquitted or cleared of any charge that caused his or her ineligibility shall be eligible for all benefits as if that employee had never been indicted for or charged by information with a felony;

“(ii) For the purposes of sub-subparagraph (i) of this sub-subparagraph, the term ‘felony’ means an offense that is punishable by a term of imprisonment that exceeds one year or a fine of at least \$1,000;

“(G) An employee who, based on conduct related to his or her employment duties, has been convicted of a misdemeanor or who has pled guilty or had been convicted after a plea of *nolo contendere* to a misdemeanor; provided, that any employee who is ultimately acquitted or cleared of any charge which caused his or her ineligibility shall be eligible for all benefits as if that employee had never been charged with a misdemeanor;

“(H) An employee who retires after the designated period for retirement, as applicable; and

“(I) An employee who has received written notice that his or her services are essential and are required by the agency until a specific date and who retires before the date cited in the notice.

“(6) An employee who receives an incentive payment under the Easy Out Program shall not be eligible for reemployment with the District government for 5 years from the date of retirement, or hired or retained as a sole source consultant or personal services contractor for 5 years from the date of retirement, unless he or she repays the incentive received if reemployed or hired or retained as a sole source consultant or personal services contractor before the end of the 5-year period.”

Section 4(b) of D.C. Law 17-134 provided that the act shall expire after 225 days of its having taken effect.

For temporary (225 day) additions, see §§ 2, 3 of Retirement Incentive Temporary Act of 2000 (D.C. Law 13-162, October 4, 2000, law notification 47 DCR 8609).

For temporary (225 day) additions, see § 2 of Unemployment Compensation Services Temporary Amendment Act of 2002 (D.C. Law 14-109, April 13, 2002, law notification 49 DCR 4057).

For temporary (225 day) additions, see § 2 of Unemployment Compensation Services Temporary Act of 2002 (D.C. Law 14-279, April 2, 2003, law notification 50 DCR 3378).

Temporary Addition of Section. — Sections 2 to 7 of D.C. Law 17-171 added sections to read as follows:

“Sec. 2. Easy out retirement incentive.

“(a) Notwithstanding section 1106 of the District of Columbia Government Comprehensive

Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-611.06) (‘CMPA’), the Council adopts changes to the compensation system for the Career, Excepted, Legal, and Management Supervisory Services under section 1104 of the CMPA, that authorize the Mayor to establish a retirement incentive program for certain District employees.

“(b) The changes to the compensation system are as follows:

“(1) The Mayor is authorized to establish an easy out retirement incentive program (‘Easy Out Program’) which may apply to eligible employees under the personnel authority of the Mayor, and employees of any other personnel authority that is under the pay authority of the Mayor if the personnel authority chooses to participate in the Easy Out Program.

“(2) The Easy Out Program may be implemented by the appropriate personnel authority at any time during calendar year 2008 after the effective date of this act.

“(3) The Easy Out Program shall be limited to employees retiring under the retirement provisions of the Civil Service Retirement System (Chapter 83 of Title 5 of the U.S. Code), except an employee retiring under the discontinued service/involuntary retirement provisions of 5 U.S.C. § 8336(d)(1) or under the disability retirement provisions of 5 U.S.C. § 8337.

“(4) The Easy Out Program shall offer a retirement incentive of 50% of an employee’s annual rate of basic pay from the employee’s salary or pay schedule which was in effect on October 14, 2007, not to exceed \$25,000.

“(5) Retirement incentive payments shall be prorated in the case of a part-time employee.

“(6) Retirement incentive payments shall not be considered basic pay for computing retirement entitlement, insurance entitlement, any category of premium pay entitlement, lump-sum leave, or any other entitlement that is computed on basic pay.

“(7) No incentive pay shall be paid to:

“(A) An employee retiring under the discontinued service/involuntary retirement provisions of 5 U.S.C. § 8336(d)(1) or the disability retirement provisions of 5 U.S.C. § 8337;

“(B) An employee who is a reemployed annuitant under the provisions of 5 U.S.C. § 8344;

“(C) An employee who is in a critical position as defined by regulations promulgated by the Mayor;

“(D) An employee who is under indictment or who is charged by information with or who has been convicted of a felony or who has been convicted after a plea of *nolo contendere* to a felony related to his or her employment duties; provided, that any employee who ultimately is acquitted or cleared of any charge that caused his or her ineligibility shall be eligible for all benefits as if that employee had never been

indicted for or charged by information with a felony;

"(E) An employee who, based on conduct related to his or her employment duties, has been convicted of a misdemeanor or who has plead guilty or has been convicted after a plea of nolo contendere to a misdemeanor; provided, that any employee who is ultimately acquitted or cleared of any charge which caused his or her ineligibility shall be eligible for all benefits as if that employee had never been charged with a misdemeanor; or

"(F) An employee who is a sworn member of the Metropolitan Police Department or the Fire and Emergency Medical Services Department.

"(8) For the purposes of paragraph (7)(D) of this subsection, the term "felony" means an offense that is punishable by a term of imprisonment that exceeds one year or a fine of at least \$1,000.

"(9) An employee who receives an incentive payment under the Easy Out Program shall not be eligible for reemployment with the District government for 5 years from the date of retirement, or hired or retained as a sole source consultant or personal services contractor for 5 years from the date of retirement, unless he or she repays the incentive received if reemployed or hired or retained as a sole source consultant or personal services contractor before the end of the 5-year period.

"(10) Notwithstanding the provisions of paragraph (9) of this subsection, and on a case-by-case basis, the Director of the D.C. Department of Human Resources or independent personnel authority may waive repayment of the incentive; provided, that in the case of an emergency situation involving a direct threat to life or property, the person has knowledge, skills, or abilities directly related to resolving the emergency situation and will serve on a temporary basis not to exceed 60 days.

"Sec. 3. Early out retirement incentive.

"(a) Notwithstanding section 1106 of the CMPA, the Council adopts changes to the compensation system for the Career, Excepted, Legal, and Management Supervisory Services under section 1104 of the CMPA that authorize the Mayor to establish a retirement incentive program for certain District employees.

"(b) The changes to the compensation system are as follows:

"(1) The Mayor is authorized to establish an early out retirement incentive program ('Early Out Program') which may apply to eligible employees under the personnel authority of the Mayor and employees of any other personnel authority that is under the pay authority of the Mayor if the personnel authority chooses to participate in the Early Out Program.

"(2) The Early Out Program may be implemented by the appropriate personnel authority

at any time during calendar year 2008 after the effective date of this act.

"(3) The Early Out Program shall be limited to employees retiring under the early retirement provisions of 5 U.S.C. § 8414(b)(1)(B).

"(4) The Early Out Program shall offer a retirement incentive of 50% of an employee's annual rate of basic pay from the employee's salary or pay schedule which was in effect on October 14, 2007, not to exceed \$25,000.

"(5) Retirement incentive payments shall be prorated in the case of a part-time employee.

"(6) Retirement incentive payments shall not be considered basic pay for computing retirement entitlement, insurance entitlement, any category of premium pay entitlement, lump-sum leave, or any other entitlement that is computed on basic pay.

"(7) No retirement incentive pay shall be paid under this section to:

"(A) An employee retiring under the law enforcement or firefighter provisions of 5 U.S.C. § 8336(c), the discontinued service/involuntary retirement provisions of 5 U.S.C. § 8336 (d)(1), or the disability retirement provisions of 5 U.S.C. § 8337;

"(B) An employee who is a reemployed annuitant under the provisions of 5 U.S.C. § 8344;

"(C) An employee who is in a critical position as defined by regulations promulgated by the Mayor;

"(D) An employee who is under the indictment or who is charged by information with or who has been convicted of a felony or who has been convicted after a plea of nolo contendere to a felony related to his or her employment duties; provided, that any employee who ultimately is acquitted or cleared of any charge that cause his or her ineligibility shall be eligible for all benefits as if that employee had never been indicted for or charged by information with a felony;

"(E) An employee who, based on conduct related to his or her employment duties, has been convicted of a misdemeanor or who has plead guilty or has been convicted after a plea of nolo contendere to a misdemeanor; provided, that any employee who is ultimately acquitted or cleared of any charge which caused his or her ineligibility shall be eligible for all benefits as if that employee had never been charged with a misdemeanor; or

"(F) An employee who is a sworn member of the Metropolitan Police Department or the Fire and Emergency Medical Services Department.

"(8) For the purposes of paragraph (7)(D) of this subsection, the term "felony" means an offense that is punishable by a term of imprisonment that exceeds one year or a fine of at least \$1,000.

"(9) An employee who receives an incentive payment under the Early Out Program shall not be eligible for reemployment with the Dis-

trict government for 5 years from the date of retirement, or hired or retained as a sole source consultant or personal services contractor for 5 years from the date of retirement, unless he or she repays the incentive if reemployed or rehired or retained as a sole source consultant or personal services contractor before the end of the 5-year period.

“(10) Notwithstanding the provisions of paragraph (9) of this subsection, and on a case-by-case basis, the Director of the D.C. Department of Human Resources or independent personnel authority may waive repayment of the incentive; provided, that in the case of an emergency situation involving a direct threat to life or property, the person has knowledge, skills, or abilities directly related to the resolving the emergency situation and will serve on a temporary basis not to exceed 60 days.

“Sec. 4. Retirement incentives for employees covered under other retirement systems.

“(a) Notwithstanding section 1106 of the CMPA (D.C. Official Code § 1-611.06), the Council of the District of Columbia adopts changes to the compensation system for the Career, Excepted, Legal, and Management Supervisory Services under section 1104 of the CMPA that authorize the Mayor to establish a retirement incentive program for the following employees:

“(1) Employees first employed by the District government after September 30, 1987 who have completed at least 5 years of creditable service with the District government, have vested under the Defined Contribution Plan as provided in section 2610 of the CMPA, and are separating from District government service after becoming entitled to retirement benefits under the Social Security Act; and

“(2) Employees retiring under any of the other District government retirement systems.

“(b) Retirement incentives under this section may be implemented by the appropriate personnel authority at any time during calendar year 2008 after the effective date of this act.

“(c) Retirement incentives under this section shall consist of 50% of an employee's annual rate of basic pay from the employee's salary or pay schedule which was in effect on October 14, 2007, not to exceed \$25,000.

“(d) Retirement incentive payments shall be prorated in the case of a part-time employee.

“(e) Retirement incentive payments shall not be considered basic pay for computing retirement entitlement, insurance entitlement, any category of premium pay entitlement, lump-sum leave, or any other entitlement that is computed on basic pay.

“(f) No retirement incentive under this section shall be paid to:

“(1) An employee who is in a critical position as defined by regulations promulgated by the Mayor;

“(2) An employee who is under the indictment or who is charged by information with or who has been convicted of a felony or who has been convicted after a plea of nolo contendere to a felony related to his or her employment duties; provided, that any employee who ultimately is acquitted or cleared of any charge that cause his or her ineligibility shall be eligible for all benefits as if that employee had never been indicted for or charged by information with a felony;

“(3) An employee who, based on conduct related to his or her employment duties, has been convicted of a misdemeanor or who has plead guilty or has been convicted after a plea of nolo contendere to a misdemeanor; provided, that any employee who is ultimately acquitted or cleared of any charge which caused his or her ineligibility shall be eligible for all benefits as if that employee had never been charged with a misdemeanor; or

“(4) An employee who is a sworn member of the Metropolitan Police Department or the Fire and Emergency Medical Services Department.

“(g) For the purposes of paragraph (f)(2) of this section, the term ‘felony’ means an offense that is punishable by a term of imprisonment that exceeds one year or a fine of at least \$1,000.

“(h) An employee who receives an incentive payment under this section shall not be eligible for reemployment with the District government for 5 years from the date of retirement, or hired or retained as a sole source consultant or personal services contractor for 5 years from the date of retirement, unless he or she repays the incentive if reemployed or rehired or retained as a sole source consultant or personal services contractor before the end of the 5-year period.

“(i) Notwithstanding the provisions of subsection (h) of this section, and on a case-by-case basis, the Director of the D.C. Department of Human Resources or independent personnel authority may waive repayment of the incentive; provided, that in the case of an emergency situation involving a direct threat to life or property, the person has knowledge, skills, or abilities directly related to the resolving the emergency situation and will serve on a temporary basis not to exceed 60 days.

“Sec. 5. Retention award. “The Mayor shall issue rules to create and implement a Retention Award for Sustained Superior Performance for up to \$25,000 for the remainder of the calendar year 2008.

“Sec. 6. Not an entitlement or private right of action. No provision of this act shall be construed to create an entitlement or private right of action on the part of any District government employee with respect to the easy out retirement incentive or early out retirement incentive.

"Sec. 7. Rules. The Mayor shall issue rules to implement the provisions of sections 2, 3, 4, and 5."

Section 9(b) of D.C. Law 17-171 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary authority of the Mayor to establish retirement incentive programs for certain employees subject to transfer to the Health and Hospitals Public Benefit Corporation, see § 403 of the Health and Hospitals Public Benefit Corporation Second Congressional Review Emergency Act of 1996 (D.C. Act 11-487, January 2, 1997, 44 DCR 634).

For temporary authority of the Mayor to establish a voluntary severance incentive program for certain employees subject to transfer to the Health and Hospitals Public Benefit Corporation, see § 404 of the Health and Hospitals Public Benefit Corporation Second Congressional Review Emergency Act of 1996 (D.C. Act 11-487, January 2, 1997, 44 DCR 634).

For temporary approval of proposed changes to the Career and Excepted Service compensation system and temporary authority of the Mayor to establish retirement incentive programs for certain employees, see § 403 of the Health and Hospitals Public Benefit Corporation Congressional Review Emergency Act of 1997 (D.C. Act 12-39, March 31, 1997, 44 DCR 2044).

For temporary approval of proposed changes to the Career and Excepted Service compensation system and temporary authorization of the Mayor to establish a voluntary severance incentive program for certain employees, see § 404 of the Health and Hospitals Public Benefit Corporation Congressional Review Emergency Act of 1997 (D.C. Act 12-39, March 31, 1997, 44 DCR 2044).

For temporary prohibition on re-employment with the District government, see § 405 of the Health and Hospitals Public Benefit Corporation Second Congressional Review Emergency Act of 1996 (D.C. Act 11-487, January 2, 1997, 44 DCR 634), and § 405 of the Health and Hospitals Public Benefit Corporation Congressional Review Emergency Act of 1997 (D.C. Act 12-39, March 31, 1997, 44 DCR 2044).

For temporary (90-day) amendment of section, see §§ 302 and 303 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see §§ 302, 303, and 305 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

For temporary (90 day) authorization of the retention of a former employee, who received a retirement incentive, under a personal services contract as an unemployment compensation

claims examiner, see § 2 of Unemployment Compensation Services Emergency Amendment Act of 2001 (D.C. Act 14-216, December 21, 2001, 49 DCR 388).

For temporary (90 day) authorization of the retention of a former employee, who received a retirement incentive, under a personal services contract as an unemployment compensation claims examiner, see § 2 of Unemployment Compensation Services Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-299, March 25, 2002, 49 DCR 3382).

For temporary (90 day) authorization of the retention of a former employee who received a retirement incentive under a personal services contract as an unemployment claims examiner, see § 2 of Unemployment Compensation Services Emergency Act of 2002 (D.C. Act 14-566, December 23, 2002, 50 DCR 290).

For temporary (90 day) authorization of the retention of a former employee who received a retirement incentive under a personal services contract as an unemployment claims examiner, see § 2 of the Unemployment Compensation Program Services Congressional Review Emergency Act of 2003 (D.C. Act 15-34, March 24, 2003, 50 DCR 2566).

For temporary (90 day) amendment of section, see § 2 of District of Columbia Public Library Retirement Incentive Emergency Act of 2007 (D.C. Act 17-240, January 11, 2008, 55 DCR 2209).

For temporary (90 day) additions, see §§ 2 to 7 of Retirement Incentive Emergency Act of 2008 (D.C. Act 17-321, March 20, 2008, 55 DCR 3439).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 3-130. — For legislative history of D.C. Law 3-130, see Historical and Statutory Notes following § 1-611.14.

Legislative history of Law 6-15. — For legislative history of D.C. Law 6-15, see Historical and Statutory Notes following § 1-608.01.

Legislative history of Law 8-94. — For legislative history of D.C. Law 8-94, see Historical and Statutory Notes following § 1-611.04.

Legislative history of Law 19-115. — For history of Law 19-115, see notes under § 1-608.01.

Resolutions. — Resolution 16-219, the "Excepted Service Employees Compensation System Changes Approval Resolution of 2005", was approved effective July 6, 2005.

Editor's notes. — Fiscal Year 1995 Spending Reduction Conditional Approval Emergency Resolution of 1994: Pursuant to Resolution 10-423, effective August 5, 1994, the Council approved, on an emergency basis, the proposed Easy Out and Early Out Retirement

Incentive Programs for Career and Excepted Service Employees under the Mayor's personnel authority and the District of Columbia General Hospital Operational and Financial Viability Plan.

Fiscal Year 1995 Spending Reduction Amendment Approval Emergency Resolution of 1994: Pursuant to Resolution 10-455, effective November 1, 1994, the Council approved, on an emergency basis, changes to the Career and Excepted Service compensation system to authorize the Mayor to extend the retirement incentive program for certain District government employees.

District Government Voluntary Severance Incentive Program Approval Emergency Resolution of 1994: Pursuant to Resolution 10-490, effective December 6, 1994, the Council approved, on an emergency basis, the proposed Voluntary Severance Incentive Program for Career and Excepted Service Employees.

Metropolitan Police Department pay and benefit performance: See Historical and Statutory Notes following § 1-611.05.

Optical and dental benefits: Section 401(a) of D.C. Law 11-52 provided that the optical and dental benefits for Career and Excepted Services employees not covered by collective bargaining, approved pursuant to Resolution 6-305, are reduced to a level that will allow maximum benefits to continue within available appropriations.

Section 401(b) of D.C. Law 11-52 provided that the Mayor shall renegotiate the optical and dental benefits contract to implement subsection (a) of this section.

Fiscal Year 1995 Spending Reduction Approval Emergency Resolution of 1995: Pursuant to Resolution 11-21, effective February 7, 1995, the Council approved, on an emergency basis, changes to the Career and Excepted Service compensation system to authorize the Mayor to extend the retirement incentive program for certain District government employees.

Contract Appeals Board Career and Excepted Service Compensation Approval Resolution of 1998: Pursuant to Resolution 12-396, effective March 3, 1998, the Council approved the compensation for the Contract Appeals Board Career and Excepted Services.

Office of Emergency Preparedness Executive Service Compensation Approval Resolution of 1998: Pursuant to Resolution 12-397, effective March 3, 1998, the Council approved the proposed compensation submitted by the Mayor for the Director of the Office of Emergency Preparedness.

Career and Excepted Service Employees Compensation System Changes for Fire Fighters Approval Emergency Resolution of 1998: Pursuant to Resolution 12-434, effective March 3, 1998, the Council approved, on an emergency

basis, the proposed compensation system changes for uniformed members of the Fire and Emergency Medical Services Department not covered by collective bargaining.

Chief of the Metropolitan Police Department Salary Adjustment Approval Resolution of 1998: Pursuant to Resolution 12-471, effective April 21, 1998, the Council approved a salary adjustment for the Chief of the Metropolitan Police Department.

Career, Educational, and Excepted Service Nonunion Employee Emergency Compensation System Change Emergency Approval Resolution of 1998: Pursuant to Resolution 12-487, effective June 2, 1998, the Council approved, on an emergency basis, a compensation system change for Career, Educational, and Excepted Service nonunion employees.

Career and Excepted Services Compensation System Changes for Nonunion Officers and Members of the Metropolitan Police Department Emergency Approval Resolution of 1998: Pursuant to Resolution 12-506, effective May 19, 1998, the Council approved, on an emergency basis, the proposed Career and Excepted Services compensation system changes for nonunion officers and members of the Metropolitan Police Department.

Contract Appeals Board Career and Excepted Service Compensation Changes Approval Resolution of 1998: Pursuant to Resolution 12-583, effective July 7, 1998, the Council approved the proposed compensation submitted by the Mayor for Judge Jonathan D. Zischkau, Administrative Judge of the Contract Appeals Board.

Career and Excepted Service Employees Compensation System Changes for Metropolitan Police Officers Emergency Approval Resolution of 1998: Pursuant to Resolution 12-558, effective June 16, 1998, the Council approved the Career and Excepted Service Employees compensation system changes for the Metropolitan Police Officers.

Metropolitan Police Department Civilian Communications Supervisors Pay Increase Emergency Approval Resolution of 1998: Pursuant to Resolution 12-766, effective November 10, 1998, the Council approved, on an emergency basis, the proposed compensation changes for civilian employees of the District of Columbia Metropolitan Police Department Communications Division not covered by collective bargaining.

Career and Excepted Service Employees Compensation System Changes for Firefighters Emergency Approval Resolution of 1998: Pursuant to Resolution 12-778, effective November 10, 1998, the Council approved, on an emergency basis, the proposed compensation system changes for uniformed members of the Fire and Emergency Medical Services Department not covered by collective bargaining.

Career and Expected Services Compensation System Changes for Nonunion Employees of the Commission on Mental Health Services Emergency Approval Resolution of 1998: Pursuant to Resolution 12-840, effective December 15, 1998, the Council approved, on an emergency basis, the proposed compensation system changes for nonunion employees of the Commission on Mental Health Services.

Attorney Retention Allowance Compensation System Change for Attorneys in the Office of the Corporation Counsel Emergency Approval Resolution of 1998: Pursuant to Resolution 12-859, effective December 15, 1998, the Council approved, on an emergency basis, a compensation system change that authorizes the Mayor to establish and to pay an attorney retention allowance of up to 20% for series DS-905 attorneys in the Office of the Corporation Counsel.

Career and Expected Service Employees Compensation System Changes for DS-699 (Emergency Medical Technician, Intermediate Technician, and Paramedic) Employees Emergency Approval Resolution of Fiscal Year 1999: Pursuant to Resolution 12-846, effective December 15, 1998, the Council approved, on an emergency basis, the proposed compensation system changes for civilian employees in series DS-699 (Emergency Medical Technician, Intermediate Technician, and Paramedic) of the Fire and Emergency Medical Services Department not covered by collective bargaining.

Sections 302, 303, and 305 of D.C. Law 13-172 provided:

"Sec. 302. Easy out retirement incentive.

"(a) Notwithstanding section 1106 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 ('CMPA') the Council adopts changes to the Career and Excepted Service compensation system under section 1104 of the CMPA, that authorize the Mayor to establish a retirement incentive program for certain District employees.

"(b) The changes to the compensation system are as follows:

"(1) The Mayor is authorized to establish an easy out retirement incentive program ('Easy Out Program') which shall apply to eligible employees under the personnel authority of the Mayor, and employees of any other personnel authority that is under the pay authority of the Mayor if the personnel authority chooses to participate in the Easy Out Program.

"(2) The Easy Out Program may be implemented by the appropriate personnel authority at any time after the effective date of this act.

"(3) The Easy Out Program shall be limited to employees retiring under the optional retirement provisions of 5 U.S.C. § 8336(a), (b), or (f).

"(4) The Easy Out Program shall offer a retirement incentive of not more than 50% of an employee's annual rate of basic pay from the

employee's salary or pay schedule which was in effect on April 9, 2000, not to exceed \$25,000, to be paid within one year of the employee's retirement.

"(5) Retirement incentive payments shall be prorated in the case of a part-time employee.

"(6) Retirement incentive payments shall not be considered basic pay for computing retirement entitlement, insurance entitlement, any category of premium pay entitlement, lump-sum leave, or any other entitlement that is computed on basic pay.

"(7) No incentive payment shall be paid to:

"(A) An employee retiring under the law enforcement or firefighter provisions of 5 U.S.C. § 8336(c), the discontinued service/involuntary retirement provisions of 5 U.S.C. § 8336(d)(1), or the disability retirement provisions of 5 U.S.C. § 8337;

"(B) An employee who is a reemployed annuitant under the provisions of 5 U.S.C. § 8344;

"(C) An employee who is in a critical position as defined by regulations promulgated by the Mayor;

"(D) An employee who is a sworn member of the Metropolitan Police Department or the Fire and Emergency Medical Services Department;

"(E) An employee who is under indictment or who is charged by information with or who has been convicted of a felony or who has been convicted after a plea of nolo contendere to a felony related to his or her employment duties; provided, that any employee who is ultimately acquitted or cleared of any charge that caused his or her ineligibility shall be eligible for all benefits as if that employee had never been indicted for or charged by information with a felony; or

"(F) An employee who, based on conduct related to his or her employment duties, has been convicted of a misdemeanor or who has plead guilty or has been convicted after a plea of nolo contendere to a misdemeanor; provided, that any employee who is ultimately acquitted or cleared of any charge that caused his or her ineligibility shall be eligible for all benefits as if that employee had never been charged with a misdemeanor.

"(8) For the purposes of paragraph (7)(E) of this subsection, the term 'felony' means an offense that is punishable by a term of imprisonment that exceeds one year or a fine of at least \$1,000.

"(9) An employee who receives an incentive payment under the Easy Out Program shall not be eligible for reemployment with the District government for 5 years from the date of retirement, or hired or retained as a sole source consultant or personal services contractor for 5 years from the date of retirement.

"Sec. 303. Early out retirement incentive.

"(a) Notwithstanding section 1106 of the District of Columbia Government Comprehensive

Merit Personnel Act of 1978 ('CMPA'), the Council adopts changes to the Career and Excepted Service compensation system under section 1104 of the CMPA, that authorize the Mayor to establish a retirement incentive program for certain District employees.

"(b) The changes to the compensation system are as follows:

"(1) The Mayor is authorized to establish an early out retirement incentive program ('Early Out Program') which shall apply to eligible employees under the personnel authority of the Mayor, and employees of any other personnel authority that is under the pay authority of the Mayor, if the personnel authority chooses to participate in the Early Out Program.

"(2) The Early Out Program may be implemented by the appropriate personnel authority at any time after the effective date of this act.

"(3) The Early Out Program shall be limited to employees retiring under the voluntary early out retirement provisions of 5 U.S.C. § 8336(d)(2).

"(4) The Early Out Program shall offer a retirement incentive of not more than 50% of an employee's annual rate of basic pay from the employee's salary or pay schedule which was in effect on April 9, 2000, not to exceed \$25,000, to be paid within one year of the employee's retirement.

"(5) Retirement incentive payments shall be prorated in the case of a part-time employee.

"(6) Retirement incentive payments shall not be considered basic pay for computing retirement entitlement, insurance entitlement, any category of premium pay entitlement, lump-sum leave, or any other entitlement that is computed on basic pay.

"(7) No incentive payment shall be paid to:

"(A) An employee retiring under the law enforcement or firefighter provisions of 5 U.S.C. § 8336(c), the discontinued service/involuntary retirement provisions of 5 U.S.C. § 8336(d)(1),

or the disability retirement provisions of 5 U.S.C. § 8337;

"(B) An employee who is a reemployed annuitant under the provisions of 5 U.S.C. § 8344;

"(C) An employee who is in a critical position as defined by regulations promulgated by the Mayor;

"(D) An employee who is a sworn member of the Metropolitan Police Department or the Fire and Emergency Medical Services Department;

"(E) An employee who is under indictment or who is charged by information with or who has been convicted of a felony or who has been convicted after a plea of nolo contendere to a felony related to his or her employment duties; provided, that any employee who is ultimately acquitted or cleared of any charge that caused his or her ineligibility shall be eligible for all benefits as if that employee had never been indicted for or charged by information with a felony; or

"(F) An employee who, based on conduct related to his or her employment duties, has been convicted of a misdemeanor or who has plead guilty or has been convicted after a plea of nolo contendere to a misdemeanor; provided, that any employee who is ultimately acquitted or cleared of any charge that caused his or her ineligibility shall be eligible for all benefits as if that employee had never been charged with a misdemeanor.

"(8) For the purposes of paragraph (7)(E) of this subsection, the term 'felony' means an offense that is punishable by a term of imprisonment that exceeds one year or a fine of at least \$1,000.

"(9) An employee who receives an incentive payment under the Early Out Program shall not be eligible for reemployment with the District government for 5 years from the date of retirement, or hired or retained as a sole source consultant or personal services contractor for 5 years from the date of retirement."

"Sec. 305. Sunset provision. "This title shall expire on December 31, 2000."

§ 1-611.07. Executive pay plan. [Repealed].

Repealed.

(Mar. 3, 1979, D.C. Law 2-139, § 1107, 25 DCR 5740; Aug. 1, 1985, D.C. Law 6-15, § 7(d), 32 DCR 3570; Apr. 12, 1997, D.C. Law 11-259, § 304(d), 44 DCR 1423; June 10, 1998, D.C. Law 12-124, § 101(n)(4), 45 DCR 2464.)

Cross references. — Commissioner of insurance and securities, rate of pay, see § 31-104.

Prior Codifications. — 1981 Ed., § 1-612.7.

1973 Ed., § 1-341.7.

Legislative history of Law 12-124. — For

legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Editor's notes. — Applicability of § 101(n) of D.C. Law 12-124: See Historical and Statutory Notes following § 1-611.02.

§ 1-611.08. Compensation — Members of boards and commissions.

(a) Each member of any board or commission who receives compensation or reimbursement of expenses on January 1, 1980, shall receive such rates of compensation or reimbursement of expenses as are provided in existing law, rule, regulation, or order, or in this chapter, except as may be modified from time to time by rules and regulations published pursuant to subsection (b) of this section.

(b) The Mayor of the District of Columbia is authorized to establish by rule and regulation the rates of compensation or reimbursement of expenses for members of any board or commission, including any board or commission established after January 1, 1980. Any such rules and regulations proposed by the Mayor shall be transmitted to the Council of the District of Columbia for a 30-day (excluding Saturdays, Sundays, holidays, and days on which the Council of the District of Columbia is on recess) review period. Such rules and regulations shall become effective only if the Council of the District of Columbia does not adopt, within 30 days (excluding Saturdays, Sundays, holidays, and days on which the Council of the District of Columbia is on recess) from the date of the Mayor's submission, a resolution disapproving such rules and regulations in whole or in part. Notwithstanding the provisions of § 1-604.05, rules and regulations published under this subsection shall be effective no earlier than 30 days after their publication in the District of Columbia Register.

(c)(1) Notwithstanding subsections (a) and (b) of this section, or any other provision of law, members of boards and commissions shall not be compensated for time expended in the performance of official duties; except that members of the following boards and commissions shall be entitled to compensation as currently authorized by law:

- (A) Public Service Commission;
- (B) Contract Appeals Board;
- (C) Rental Housing Commission;
- (D) Board of Parole;

(E) The Chairperson and public and industry members of the Taxicab Commission; and

- (F) The District of Columbia Retirement Board.

(2) Beginning April 1, 1995, members of the following boards and commissions shall be entitled to compensation as follows:

(A) Board of Zoning Adjustment members shall be entitled to compensation at the hourly rate of \$25 per meeting, not to exceed \$12,000 for each board member per year.

(B) Office of Employee Appeals members shall be entitled to compensation at the hourly rate of \$25 per meeting, not to exceed \$3,000 for each member per year.

(C) Police and Firemen's Retirement and Relief Board members shall be entitled to compensation at the hourly rate of \$25 per meeting, not to exceed \$8,000 for each board member per year.

(D) Public Employee Relations Board members shall be entitled to compensation at the hourly rate of \$25 per meeting, not to exceed \$3,000 for each board member per year.

(E) Repealed.

(F) Redevelopment Land Agency board members shall be paid per diem compensation at a rate established by the Mayor, except that such rate may not exceed the daily equivalent of the annual rate of basic pay for level 15 of the District Schedule for each day (including travel time) during which they are engaged in the actual performance of their duties.

(G) Zoning Commission members shall be entitled to compensation at the hourly rate of \$25 per meeting, not to exceed \$12,000 for each commission member per year.

(H) Historic Preservation Review Board members shall be entitled to compensation at the hourly rate of \$25 per meeting, not to exceed \$3,000 for each board member per year.

(I) Alcoholic Beverage Control Board members shall be entitled to compensation at the hourly rate of \$40 per meeting, not to exceed \$15,000 for each board member per year.

(J) The Chairpersons of the boards and commissions specified in this paragraph who are public members shall be entitled to an additional compensation of 20% above the annual maximum, except that no maximum shall apply to the compensation paid to the chairperson of the Real Property Tax Appeals Commission for the District of Columbia.

(K) Effective October 1, 2002, public and industry members of the District of Columbia Taxicab Commission shall be entitled to compensation of \$25 per meeting or work session, not to exceed \$1,350 for each public or industry member per year, as provided in § 50-305(c). Total compensation for all Commission members shall not exceed \$10,800, for all meetings and work sessions.

(d) Notwithstanding subsections (a), (b), and (c) of this section, or any other provision of law, members of boards or commissions shall not be entitled to reimbursement for expenses; except that transportation, parking, or mileage expenses incurred in the performance of official duties may be reimbursed, not to exceed \$15 per meeting or currently authorized amounts, whichever is less.

(e) The Mayor shall conduct a comprehensive study of the compensation and stipend levels of the District's boards and commissions, recognizing the different characteristics of these entities, and examining the best practices in the compensation and stipend policies of surrounding and comparable jurisdictions. Based on this study, the Mayor shall provide a report to the Council by December 31, 2002, with recommendations for a rational compensation and stipend policy applicable to boards and commissions, including any recommendations for changes in specific compensation and stipend levels that could be addressed in the FY 2004 budget and financial plan.

(Mar. 3, 1979, D.C. Law 2-139, § 1108, 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(k), 27 DCR 2632; Sept. 26, 1995, D.C. Law 11-52, § 801(b), 42 DCR 3684; Mar. 20, 1998, D.C. Law 12-60, § 101, 44 DCR 7378; Nov. 29, 1999, 113

Stat. 1515, Pub. L. 106-113, § 119(h); Oct. 20, 1999, D.C. Law 13-38, § 302, 46 DCR 6373; May 3, 2001, D.C. Law 13-298, § 201, 48 DCR 2959; Oct. 1, 2002, D.C. Law 14-190, §§ 2403, 2502, 2603, 49 DCR 6968; Sept. 30, 2004, D.C. Law 15-187, § 102(b), 51 DCR 6525; Dec. 7, 2004, D.C. Law 15-205, § 1212, 51 DCR 8441; Apr. 13, 2005, D.C. Law 15-354, § 5(b), 52 DCR 2638; Apr. 7, 2006, D.C. Law 16-91, § 120(b), 52 DCR 10637; Sept. 19, 2006, D.C. Law 16-159, § 3, 53 DCR 5385; Mar. 25, 2009, D.C. Law 17-361, § 3, 56 DCR 1204; Apr. 8, 2011, D.C. Law 18-363, § 3(b), 58 DCR 963.)

Cross references. — Board of consumer claims arbitration, compensation, see § 50-503.

Board of elections and ethics, compensation, see § 1-1001.04.

Board of library trustees, compensation, see § 39-104.

Board of real property assessments and appeals, compensation, see § 47-825.01.

Board of veterinary examiners, compensation, see § 3-505.

Boxing and wrestling commission, member compensation, see § 3-604.

Education licensure commission, compensation, see § 38-1304.

Employee deferred compensation program, employee eligibility, treatment of benefits, authorization of program, see § 47-3601.

Health occupations, members of health occupation boards and advisory committees, compensation, see § 3-1204.06.

Law revision commission, compensation, see § 45-301.

Mayor's authority to determine honorariums, "honorariums" defined, see § 1-321.01.

Occupational safety and health commission, compensation, see § 32-1106.

Public fund for drug prevention and children at risk, compensation, see § 47-4003.

Statewide health coordinating council, reimbursement of certain member expenses, see § 44-403.

Taxation, non-health related occupations and professions licensure, establishment of boards, compensation, see § 47-2853.09.

Taxicab commission, compensation, see § 50-305.

Tax revision commission, reimbursement of certain member expenses, see § 47-463.

Workers' compensation insurance study commission, establishment, see § 32-1542.01.

Section references. — This section is referred to in §§ 1-602.02, 1-603.01, 1-606.01, 1-611.12, 1-612.03, and 2-1404.03.

Prior Codifications. — 1981 Ed., § 1-612.8.

1973 Ed., § 1-341.8.

Effect of amendments. — Public Law 106-113 rewrote subpar. (c)(2)(F), which previously read:

"Redevelopment Land Agency members shall be entitled to compensation at the hourly rate

of \$25 per meeting, not to exceed \$1,200 for each member per year."

D.C. Law 13-38, in subpars. (c)(2)(A) and (c)(2)(G), substituted "\$6,000" for "\$3,000".

D.C. Law 13-298, in subpar. (c)(2)(I), substituted "\$6,000" for "\$2,500".

D.C. Law 14-190, in subpars. (c)(2)(A) and (c)(2)(G), substituted "\$12,000" for "\$6,000"; in subpar. (c)(1)(E), substituted "Chairperson, and public and industry members" for "Chairperson"; added subpar. (c)(2)(K); and added subsec. (e).

D.C. Law 15-187, in subpar. (c)(2)(I), substituted "\$12,000" for "\$6,000".

D.C. Law 15-205, in subpar. (H) of par. (2) of subsec. (c), substituted "3,000" for "1,800".

D.C. Law 15-354, in subsec. (c)(1)(E), validated a previously made technical correction.

D.C. Law 16-91, in subpar. (c)(2)(I), validated a previously made technical correction.

D.C. Law 16-159 repealed subsec. (c)(2)(E) which had read as follows: "(E) Board of Real Property Assessments and Appeals members shall be entitled to compensation at the hourly rate of 25 per meeting."

D.C. Law 17-361, in subsec. (c)(2)(I), substituted "\$40" for "\$25" and substituted "\$15,000" for "\$12,000".

D.C. Law 18-363, in subsec. (c)(2)(J), substituted "Real Property Tax Appeals Commission for the District of Columbia" for "Board of Real Property Assessments and Appeals".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 801 of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

For temporary (225 day) amendment of section, see § 2 of Real Property Tax Reassessment Temporary Act of 1996 (D.C. Law 11-207, April 9, 1994, law notification 44 DCR 2402).

For temporary (225 day) amendment of section, see § 101 of Fiscal Year 1998 Revised Budget Support Temporary Act of 1997 (D.C. Law 12-59, March 20, 1998, law notification 45 DCR 2094).

For temporary (225 day) amendment of section, see § 3 of Real Property Tax Reassessment Temporary Amendment Act of 1998 (D.C.

Law 12-125, June 10, 1998, law notification 45 DCR 5883).

For temporary (225 day) amendment of section, see § 3 of Real Property Tax Reassessment and Cold Weather Eviction Temporary Act of 1999 (D.C. Law 13-1, May 20, 1999, law notification 46 DCR 5301).

Emergency legislation. — For temporary amendment of section, see § 101 of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and § 101 of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

For temporary amendment of section, see § 3 of the Real Property Tax Reassessment Congressional Adjournment Emergency Act of 1997 (D.C. Act 12-11, March 3, 1997, 44 DCR 1741), and see § 3 of the Real Property Tax Reassessment Second Emergency Act of 1997 (D.C. Act 12-244, January 13, 1998, 45 DCR 652).

For temporary amendment of section, see § 3 of the Real Property Tax Reassessment Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-293, February 27, 1998, 45 DCR 1758).

For temporary amendment of section, see § 3 of the Real Property Tax Reassessment and Cold Weather Eviction Emergency Amendment Act of 1999 (D.C. Act 13-18, February 17, 1999, 46 DCR 2354).

For temporary (90-day) amendment of section, see § 302 of the Service Improvement and Fiscal Year 2000 Budget Support Emergency Act of 1999 (D.C. Act 13-110, July 28, 1999, 46 DCR 6320).

For temporary (90 day) amendment of section, see §§ 2303, 2402, and 2503 of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

For temporary (90 day) amendment of section, see § 1212 of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 1212 of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 3-81. — For legislative history of D.C. Law 3-81, see Historical and Statutory Notes following § 1-602.02.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 1-603.01.

Legislative history of Law 12-60. — Law 12-60, the “Fiscal Year 1998 Revised Budget

Support Act of 1998,” was introduced in Council and assigned Bill No. 12-353, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on September 8, 1997, and October 7, 1997, respectively. Signed by the Mayor on October 24, 1997, it was assigned Act No. 12-191 and transmitted to both Houses of Congress for its review. D.C. Law 12-60 became effective on March 20, 1998.

Legislative history of Law 13-38. — For Law 13-38, see notes following § 1-603.01.

Legislative history of Law 13-298. — Law 13-298, the “Title 25, D.C. Code Enactment and Related Amendments Act of 2001,” was introduced in Council and assigned Bill No. 13-449, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and final readings on December 5, 2000, and January 23, 2001, respectively. Signed by the Mayor on February 9, 2001, it was assigned Act No. 13-603 and transmitted to both Houses of Congress for its review. D.C. Law 13-298 became effective on May 3, 2001.

Legislative history of Law 14-190. — For Law 14-190, see notes following § 1-301.131.

Legislative history of Law 15-187. — For Law 15-187, see notes following § 1-309.10.

Legislative history of Law 15-205. — For Law 15-205, see notes following § 1-204.42.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 1-523.01.

Legislative history of Law 16-91. — For Law 16-91, see notes following § 1-301.45.

Legislative history of Law 16-159. — Law 16-159, the “Board of Real Property Assessments and Appeals Reform Act of 2006,” was introduced in Council and assigned Bill No. 16-228 which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on May 2, 2006, and June 6, 2006, respectively. Signed by the Mayor on June 26, 2006, it was assigned Act No. 16-400 and transmitted to both Houses of Congress for its review. D.C. Law 16-159 became effective on September 19, 2006.

Legislative history of Law 17-361. — Law 17-361, the “Alcoholic Beverage Enforcement Act of 2008,” was introduced in Council and assigned Bill No. 17-983 which was referred to the Committee on Public Works and Environment. The Bill was adopted on first and second readings on December 2, 2008, and December 16, 2008, respectively. Signed by the Mayor on January 16, 2009, it was assigned Act No. 17-696 and transmitted to both Houses of Congress for its review. D.C. Law 17-361 became effective on March 25, 2009.

Legislative history of Law 18-363. — For history of Law 18-363, see notes under § 1-523.01.

Short title. — Short title of title XXV of Law 14-190: Section 2501 of D.C. Law 14-190 pro-

vided that title XXV of the act may be cited as the Boards and Commissions Compensation Study Amendment Act of 2002.

Short title of subtitle T of title I of Law 15-205: Section 1211 of D.C. Law 15-205 provided that subtitle T of title I of the act may be

cited as Historic Preservation Review Board Stipends Amendment Act of 2004.

Editor's notes. — Application of Law 12-60: Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

§ 1-611.09. Compensation — Mayor and members of Council.

(a) Repealed.

(a-1) In accordance with § 1-204.21(d), the Mayor shall receive annual compensation in the amount of \$200,000, which shall be payable in equal and periodic installments. The compensation shall not be subject to step, cost of living, or other increases.

(b)(1) Members of the Council shall receive compensation in the amount of \$115,000 per year; except that the Chairman shall receive compensation pursuant to § 1-204.03(d), which shall be payable in equal and periodic installments. The compensation shall be subject to cost of living increases, but not to step or other increases. For the purposes of this section “cost of living increases” means the Consumer Price Index for all Urban Consumers (all items Washington D.C. Standard Metropolitan Statistical Area average), published on January 1 of each year.

(2) In determining the proper salary level of the Council, the Council shall consider at a minimum:

- (A) The salary level of executive agency heads;
- (B) Pay increases for nonunion employees of the District;
- (C) Any other information the Council deems necessary; and
- (D) The recommendations of the Mayor and Council Compensation

Advisory Commission established by subchapter XI-A of this chapter.

(c) Repealed.

(d) In determining the proper compensation level for the Mayor, the Council shall consider the recommendations of the Mayor and the Council Compensation Advisory Commission established by subchapter XI-A of this chapter.

(Mar. 3, 1979, D.C. Law 2-139, § 1109, 25 DCR 5740; Feb. 24, 1987, D.C. Law 6-175, §§ 2, 3(a), 33 DCR 7232; Mar. 16, 1995, D.C. Law 10-225, § 2, 41 DCR 8132; June 10, 1998, D.C. Law 12-124, § 101(n)(5), 45 DCR 2464; Oct. 20, 1999, D.C. Law 13-38, § 502, 46 DCR 6373; Apr. 7, 2006, D.C. Law 16-91, § 110(d), 52 DCR 10637; Mar. 14, 2007, D.C. Law 16-295, § 2(a), 54 DCR 1092.)

Cross references. — Lottery and charitable games control board, executive director and deputy director, limitations on compensation, see § 3-1303.

Members of Congress, limitations on compensation, see § 1-123.

Section references. — This section is referred to in §§ 1-123, 1-602.02, and 1-636.02.

Prior Codifications. — 1981 Ed., § 1-612.9.

1973 Ed., § 1-341.9.

Effect of amendments. — D.C. Law 13-38 rewrote subsec. (b), which previously read:

“The Chairman of the Council shall receive compensation in an amount equivalent to the highest rate of basic pay authorized for an executive agency head, which shall be made in equal and periodic installments. Each member of the Council other than the chairman shall be paid at an annual rate of \$10,000 less than the

annual compensation established for the Chairman.”

Section 503 of D.C. Law 13-38 repealed the “Councilmembers’ Salary Freeze Amendment Act of 1994” (D.C. Law 10-225).

D.C. Law 16-91, in par. (b)(1), substituted “pursuant to § 1-204.03(d)” for “in the amount of \$102,530 per year”.

D.C. Law 16-295 rewrote subsec. (b); and added subsec. (d).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Councilmembers’ Salary Freeze Temporary Amendment Act of 1994 (D.C. Law 10-168, August 27, 1994, law notification 41 DCR 6403).

For temporary (225 day) amendment of section, see § 2(d) of Comprehensive Merit Personnel Act Pay Limit Temporary Amendment Act of 1997 (D.C. Law 12-36, October 23, 1997, law notification 44 DCR 6554).

Emergency legislation. — For temporary amendment of section, see § 2(d) of the Comprehensive Merit Personnel Act Pay Limit Emergency Amendment Act of 1997 (D.C. Act 12-115, July 18, 1997, 44 DCR 4501), see § 2(d) of the Comprehensive Merit Personnel Act Pay Limit Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-179, October 30, 1997, 44 DCR 6948), and see § 2(d) of the Comprehensive Merit Personnel Act Pay Limit Emergency Amendment Act of 1998 (D.C. Act 12-378, June 5, 1998, 45 DCR 4465).

For temporary (90-day) amendment of section, see § 502 of the Service Improvement and Fiscal Year 2000 Budget Support Emergency Act of 1999 (D.C. Act 13-110, July 28, 1999, 46 DCR 6320).

For temporary (90-day) repeal of D.C. Law 10-225, see § 503 of the Service Improvement and Fiscal Year 2000 Budget Support Emergency Act of 1999 (D.C. Act 13-110, July 28, 1999, 46 DCR 6320).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 6-175. — Law 6-175 was introduced in Council and assigned Bill No. 6-373, which was referred to the Com-

mittee on Government Operations and reassigned to the Committee of the Whole. The Bill was adopted on first and second readings on September 23, 1986 and October 21, 1986, respectively. Signed by the Mayor on October 30, 1986, it was assigned Act No. 6-224 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-225. — Law 10-225, the “Councilmembers’ Salary Freeze Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-696, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Deemed approved without the signature of the Mayor on December 20, 1994, it was assigned Act No. 10-365 and transmitted to both Houses of Congress for its review. D.C. Law 10-225 became effective on March 16, 1995.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Legislative history of Law 13-38. — For Law 13-38, see notes following § 1-603.01.

Legislative history of Law 16-91. — For Law 16-91, see notes following § 1-301.45.

Legislative history of Law 16-295. — Law 16-295, the “Mayor and Council Compensation Adjustment and Compensation Advisory Commission Establishment Amendment Act of 2006,” was introduced in Council and assigned Bill No. 16-1002, which was referred to Committee on the Whole. The Bill was adopted on first and second readings on November 14, 2006, and December 5, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-654 and transmitted to both Houses of Congress for its review. D.C. Law 16-295 became effective on March 14, 2007.

Editor’s notes. — Request for Congressional action: Pursuant to § 5 of D.C. Law 10-168 and § 5 of D.C. Law 10-225 the Council requested that the United States Congress enact legislation to repeal § 1-204.03(c).

Applicability of § 101(n) of D.C. Law 12-124: See Historical and Statutory Notes following § 1-611.02.

§ 1-611.10. Compensation — Members of the Board of Education.

Notwithstanding any other provisions of law, each member of the District of Columbia Board of Education shall receive a salary of not more than \$15,000 annually; except the President of the Board of Education shall receive not more than \$16,000 annually. These sums shall not increase unless by an act of the Council.

(Mar. 3, 1979, D.C. Law 2-139, § 1110, 25 DCR 5740; Feb. 24, 1987, D.C. Law 6-175, § 3(b), 33 DCR 7232; Apr. 9, 1997, D.C. Law 11-198, § 301(a), 43 DCR 4569.)

Cross references. — Board of education, limitations on member compensation, see § 1-204.95.

Section references. — This section is referred to in §§ 1-602.02 and 38-101.

Prior Codifications. — 1981 Ed., § 1-612.10.
1973 Ed., § 1-341.10.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 301(a) of Fiscal Year 1997 Budget Support Temporary Amendment Act of 1996 (D.C. Law 11-226, April 9, 1997, law notification 44 DCR 2584).

Emergency legislation. — For temporary amendment of section, see § 301(a) of the Fiscal Year 1997 Budget Support Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-2, February 19, 1997, 44 DCR 1590).

Section 1001 of D.C. Act 12-2 provided for the application of the act.

Legislative history of Law 2-139. — For

legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 6-175. — For legislative history of D.C. Law 6-175, see Historical and Statutory Notes following § 1-612.09.

Legislative history of Law 11-198. — Law 11-198, the “FY 1997 Budget Support Act” was introduced in Council and assigned Bill No. 11-741, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 19, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 26, 1996, it was assigned Act No. 11-360 and transmitted to both Houses of Congress for its review. D.C. Law 11-198 became effective on April 9, 1997.

Editor’s notes. — Application of 11-198: Section 1001 of D.C. Law 11-198 provided that Titles I, II, III, V, and VI and sections 405 and 406 of the act shall apply after September 30, 1996.

§ 1-611.11. Classification and compensation policies and procedures for educational employees.

(a) The classification of all positions in the Educational Service shall be in accordance with the policies of § 1-611.01.

(a-1) Notwithstanding any other provision of law, rule, or regulation:

(1) Except for the Chancellor and any Excepted Service employees appointed pursuant to § 1-609.03(a)(4), every employee of the District of Columbia Public Schools shall be:

- (A) Classified as an Educational Service employee;
- (B) Placed under the personnel authority of the Mayor; and
- (C) Subject to all rules of the District of Columbia Public Schools;

(2) Repealed.

(3) Except for the State Superintendent of Education and any Excepted Service employees appointed pursuant to § 1-609.03(a)(7), every employee of the Office of the State Superintendent of Education shall be:

- (A) Classified as an Educational Service employee; and
- (B) Placed under the personnel authority of the Mayor.

(b) In order to carry out the policies of subsection (a) of this section, the District of Columbia Board of Education shall, for educational employees of the District of Columbia Board of Education, and the Board of Trustees of the University of the District of Columbia shall, for educational employees of the University of the District of Columbia, provide for the development of a classification system covering all positions. The respective Boards shall provide that all positions covered by this classification system are properly

evaluated by application of official classification standards, in accordance with accepted classification principles and techniques and in accordance with applicable rules and regulations. Classification systems or proposals developed under the authority of this section shall be published in the District of Columbia Register at least 60 calendar days prior to their proposed effective date. Each Board shall hold a public hearing on all such proposals it publishes in the District of Columbia Register prior to its adoption of a classification system or amendment to such system.

(c) Repealed.

(d) Compensation for all employees in the Educational Service shall be fixed in accordance with the policies of paragraphs (1), (2), (3), (4) [repealed], and (7) of subsection (a) of § 1-611.03.

(e) The new compensation systems authorized by subsection (d) of this section may include, but not be limited to, provisions for basic pay, pay increases based on quality of and length of service, premium pay, allowances, and severance pay.

(f) Each Board shall provide for appropriate consultations with employee organizations in the development of the new compensation systems.

(g)(1) Each Board shall submit to the Mayor a proposed new compensation system developed pursuant to the provisions of subsections (d) and (e) of this section. Any proposed new compensation system submitted to the Mayor by a Board as required by this subsection shall include proposed dates on which the new compensation system shall become effective. Within 20 days of the submission to the Mayor of a new compensation system proposal by a Board, the Mayor shall transmit the proposal to the Council in the form of a proposed resolution. The Mayor shall append to the proposal a statement that includes:

(A) Detailed reasons why the Mayor supports or opposes the proposal; and

(B) Any adjustments that the Mayor would like to have made to the proposal.

(2) Until the new compensation systems are approved, the compensation systems, including the salary and pay schedules in effect on December 31, 1979, shall continue in effect, provided that pay adjustments shall be made in accordance with the policy stated in § 1-611.03.

(h) The Council shall consider the proposed compensation systems in accordance with its procedures.

(i)(1) Each Board shall provide for the periodic review of its basic compensation systems, in order to improve the system and provide continuing conformity with the policy established by subsection (a) of this section.

(2) These reviews of compensation shall include, but need not be limited to, a review of the adequacy of the rates of basic pay.

(3) Each Board shall provide for appropriate consultations with employee organizations of employees under their respective jurisdiction in the periodic reviews of the compensation system.

(4) Beginning with the year commencing January 1, 1982, each Board shall submit to the Council by no later than October 1st of each year all initial proposed pay changes and adjustments and other proposed changes to the

compensation systems if any for approval by resolution under the provisions of this section.

(5) If the Council by resolution approves, without revision, the proposed pay changes, adjustments, or other proposed changes to the compensation system submitted by the Board of Education, such changes shall become effective on the dates specified in the resolution submitted by the Board of Education as provided in paragraph (4) of this subsection. If the Council takes no action on the Board of Education's proposed change or changes within 60 calendar days of the submission thereof, such change or changes shall be deemed to have been approved by the Council on the day next following the expiration of such 60-day period. The 60 calendar days for Council review shall not include days that pass during a recess of the Council.

(6) If the Council desires to revise the proposal from the Board of Education, then, within the 60 calendar days for Council review, the Council may not only disapprove the proposal by resolution according to paragraph (5) of this subsection, but may, also, inform the Board of the Council's suggested revisions to the proposal and, subsequently, the Board may submit a new proposal.

(7) No pay increase for employees of the Board of Education shall vest unless funds for such pay increase are identified in the transmittal from the Board of Education to the Council concerning such increase.

(8) If the Council by resolution approves pay changes, adjustments, and other changes in a compensation system proposed by the Board of Trustees of the University of the District of Columbia, such changes shall become effective on the dates specified in the resolution submitted by the Board of Trustees as provided in paragraph (5) of this subsection. If the Council takes no action on the proposed change submitted by the Board of Trustees of the University of the District of Columbia within 60 calendar days of the submission thereof, such changes shall be deemed to have been approved by the Council on the day next following the expiration of this 60-day period. The 60 calendar days for Council review shall not include days that pass during a recess of the Council.

(9) If the Council disapproves the change or changes proposed by the Board of Trustees of the University of the District of Columbia, pursuant to paragraph (8) of this subsection, the Board may submit a new proposal.

(10) Repealed.

(11) Repealed.

(j) Retroactive pay is payable by reason of an increase in the salary or pay schedules under this section only where:

(1) The individual is in the service of the District of Columbia government on the date of final action by the Council on the increase; or

(2) The individual retired or died during the period beginning on the effective date of the increase and ending on the date of final action by the Council on the increase, and only for the services performed during that period.

(3) Repealed.

(Mar. 3, 1979, D.C. Law 2-139, § 1111, 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(1), 27 DCR 2632; Mar. 5, 1981, D.C. Law 3-150, § 3, 27 DCR 4900;

Mar. 16, 1982, D.C. Law 4-78, § 8(b)-(d), 29 DCR 49; Aug. 1, 1985, D.C. Law 6-15, § 7(e), 32 DCR 3570; Feb. 24, 1987, D.C. Law 6-177, § 3(o), 33 DCR 7241; May 10, 1989, D.C. Law 7-231, § 3(1), 36 DCR 492; Mar. 15, 1990, D.C. Law 8-94, § 2(d), 37 DCR 782; July 13, 1991, D.C. Law 9-12, § 2(b), 38 DCR 3376; Mar. 5, 1996, D.C. Law 11-98, § 301(d), 43 DCR 5; Aug. 1, 1996, D.C. Law 11-152, § 302(n), 43 DCR 2978; June 10, 1998, D.C. Law 12-124, § 101(n)(6), 45 DCR 2464; Mar. 20, 2008, D.C. Law 17-122, § 2(c), 55 DCR 1506; Mar. 26, 2008, D.C. Law 17-135, § 2(b), 55 DCR 1683; Aug. 16, 2008, D.C. Law 17-219, §§ 4004(b), 4019(b), 55 DCR 7598.)

Cross references. — Retirement of public school teachers, compensation and salaries, see § 38-2023.16.

Retirement of public school teachers, “eligible service” defined, see § 38-2021.13.

Section references. — This section is referred to in §§ 1-602.02, 1-603.01, 1-604.04, and 1-611.01.

Prior Codifications. — 1981 Ed., § 1-612.11.

1973 Ed., § 1-341.11.

Effect of amendments. — D.C. Law 17-122 rewrote subsec. (a-1).

D.C. Law 17-135, in subsec. (d), substituted “and (7)” for “and (6)”.

D.C. Law 17-219, in subsec. (a-1)(3), substituted “of” for “transferred from the District of Columbia Public Schools to”.

D.C. Law 17-219 repealed subsec. (a-1)(2); and, in subsec. (a-1)(3), substituted “of” for “transferred from the District of Columbia Public Schools to”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 502 of Budget Support Temporary Act of 1995 (D.C. Law 11-78, January 26, 1996, law notification 43 DCR 650).

For temporary (225 day) amendment of section, see § 2(b) of Operation Enduring Freedom Active Duty Pay Differential Temporary Amendment Act of 2002 (D.C. Law 14-113, April 13, 2002, law notification 49 DCR 4061).

For temporary (225 day) amendment of section, see § 2(b) of Operation Enduring Freedom Active Duty Pay Differential Extension Temporary Act of 2002 (D.C. Law 14-247, March 25, 2003, law notification 50 DCR 2760).

For temporary (225 day) amendment of section, see § 2(b) of Operation Enduring Freedom and Operation Iraqi Freedom Active Duty Pay Differential Extension Temporary Amendment Act of 2003 (D.C. Law 15-23, July 22, 2003, law notification 50 DCR 6093).

For temporary (225 day) amendment of section, see § 2(b) of Operation Enduring Freedom and Operation Iraqi Freedom Active Duty Pay Differential Extension Temporary Amendment Act of 2004 (D.C. Law 15-158, May 18, 2004, law notification 51 DCR 5698).

For temporary (225 day) amendment of section, see § 2(b) of Operation Enduring Freedom and Operation Iraqi Freedom Active Duty Pay Differential Extension Second Temporary Act of 2004 (D.C. Law 15-323, April 8, 2005, law notification 52 DCR 4712).

Section 2(b) of D.C. Law 16-64, in subsec. (d), substituted “and (7)” for “and (6)”.

Section 4(b) of D.C. Law 16-64 provided that the act shall expire after 225 days of its having taken effect.

Section 2(b) of D.C. Law 16-299, in subsec. (d), substituted “and (7)” for “and (6)”.

Section 4(b) of D.C. Law 16-299 provided that the act shall expire after 225 days of its having taken effect.

Section 2(b) of D.C. Law 17-101, in subsec. (d), substituted “and (7)” for “and (6)”.

Section 5(b) of D.C. Law 17-101 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see §§ 2(b) and 3 of Operation Enduring Freedom Active Duty Pay Differential Emergency Amendment Act of 2001 (D.C. Act 14-225, January 8, 2002, 49 DCR 664).

For temporary (90 day) amendment of section, see § 2(b) of Operation Enduring Freedom Active Duty Pay Differential Extension Emergency Act of 2002 (D.C. Act 14-498, October 23, 2002, 49 DCR 9795).

For temporary (90 day) amendment of section, see § 2(b) of Operation Enduring Freedom Active Duty Pay Differential Extension Congressional Review Emergency Act of 2003 (D.C. Act 15-16, February 24, 2003, 50 DCR 1944).

For temporary (90 day) amendment of section, see § 2(b) of Operation Enduring Freedom and Iraqi Freedom Active Duty Pay Differential Extension Emergency Amendment Act of 2003 (D.C. Act 15-74, April 16, 2003, 50 DCR 3619).

For temporary (90 day) amendment of section, see § 2(b) of Operation Enduring Freedom and Operation Iraqi Freedom Active Duty Pay Differential Extension Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-131, July 29, 2003, 50 DCR 6845).

For temporary (90 day) amendment of section, see § 2(b) of Operation Enduring Freedom

and Operation Iraqi Freedom Active Duty Pay Differential Extension Emergency Amendment Act of 2004 (D.C. Act 15-357, February 19, 2004, 51 DCR 2574).

For temporary (90 day) amendment of section, see § 2(b) of Operation Enduring Freedom and Operation Iraqi Freedom Active Duty Pay Differential Extension Second Emergency Amendment Act of 2004 (D.C. Act 15-646, December 29, 2004, 52 DCR 233).

For temporary (90 day) amendment of section, see § 2(b) of Operation Enduring Freedom and Operation Iraqi Freedom Active Duty Pay Differential Extension Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-57, March 17, 2005, 52 DCR 3180).

For temporary (90 day) amendment of section, see § 2(b) of Operation Enduring Freedom and Operation Iraqi Freedom Active Duty Pay Differential Extension Emergency Amendment Act of 2005 (D.C. Act 16-205, November 17, 2005, 52 DCR 10522).

For temporary (90 day) amendment of section, see § 2(b) of Operation Enduring Freedom and Operation Iraqi Freedom Active Duty Pay Differential Extension Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-298, February 27, 2006, 53 DCR 1877).

For temporary (90 day) amendment of section, see § 2(b) of Operation Enduring Freedom and Operation Iraqi Freedom Active Duty Pay Differential Extension Emergency Amendment Act of 2006 (D.C. Act 16-516, October 25, 2006, 53 DCR 9099).

For temporary (90 day) amendment of section, see § 2(b) of Operation Enduring Freedom and Operation Iraqi Freedom Active Duty Pay Differential Extension Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-2, January 16, 2007, 54 DCR 1436).

For temporary (90 day) amendment of section, see § 2(b) of Operation Enduring Freedom and Operation Iraqi Freedom Active Duty Pay Differential Extension Emergency Amendment Act of 2007 (D.C. Act 17-143, October 17, 2007, 54 DCR 10745).

For temporary (90 day) amendment of section, see § 2(c) of Public Education Personnel Reform Emergency Amendment Act of 2007 (D.C. Act 17-241, January 22, 2008, 55 DCR 983).

For temporary (90 day) amendment, see § 4019(b) of Fiscal Year 2009 Budget Support Emergency Act of 2008 (D.C. Act 17-468, July 28, 2008, 55 DCR 8746).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 3-81. — For legislative history of D.C. Law 3-81, see Historical and Statutory Notes following § 1-602.02.

Legislative history of Law 3-150. — Law 3-150 was introduced in Council and assigned Bill No. 3-349, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on September 30, 1980 and October 14, 1980, respectively. Signed by the Mayor on October 29, 1980, it was assigned Act No. 3-275 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-78. — For legislative history of D.C. Law 4-78, see Historical and Statutory Notes following § 1-611.03.

Legislative history of Law 6-15. — For legislative history of D.C. Law 6-15, see Historical and Statutory Notes following § 1-608.01.

Legislative history of Law 8-74. — Section 3(b) of D.C. Law 8-74, effective March 15, 1990, provided that § 4(b) of D.C. Law 6-177 is repealed.

Legislative history of Law 7-231. — Law 7-231 was introduced in Council and assigned Bill No. 7-586, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-285 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-94. — For legislative history of D.C. Law 8-94, see Historical and Statutory Notes following § 1-611.04.

Legislative history of Law 9-12. — For legislative history of D.C. Law 9-12, see Historical and Statutory Notes following § 1-611.03.

Legislative history of Law 11-98. — For legislative history of D.C. Law 11-98, see Historical and Statutory Notes following § 1-624.07.

Legislative history of Law 11-152. — For legislative history of D.C. Law 11-152, see Historical and Statutory Notes following § 1-602.02.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Legislative history of Law 17-122. — For Law 17-122, see notes following § 1-608.01a.

Legislative history of Law 17-135. — For Law 17-135, see notes following § 1-611.03.

Legislative history of Law 17-219. — For Law 17-219, see notes following § 1-308.29.

Editor's notes. — University within-grade salary freeze: Section 1101 of D.C. Law 11-52 provided for the prohibition on the receipt of within-grade salary increases for employees of the University of the District of Columbia for 1 year following the effective date of the Fiscal Year 1995 Supplemental Budget and Rescissions of Authority Request Act of 1994 (D.C. Act 10-400).

For temporary prohibition on the receipt of within-grade salary increases by employees of

the University of the District of Columbia, see § 1101 of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Applicability of § 101(n) of D.C. Law 12-124: See Historical and Statutory Notes following § 1-611.02.

CASE NOTES

ANALYSIS

In general.
Review.

In general.

Former university employee's claim that termination as part of reduction in force (RIF) was unlawful because his job had been erroneously classified into class providing less advantageous RIF procedures than had his previous classification was precluded by failure to exhaust administrative remedies at time of his promotion and reclassification over a year previously; requiring exhaustion would serve the purposes of the exhaustion doctrine by providing courts with expertise of Office of Employee Appeals (OEA) on classification issue, and timely grievance would have allowed university to redefine the duties of the position to remove uncertainty about its classification. D.C. Code 1981, §§ 1-603.1, 1-606.3(a), 1-612.1, 1-612.11;

D.C. Mun. Regs. title 8, §§ 1600.3, 1600.5, 1600.6, 1600.7. *Gilmore v. Board of Trustees of the Univ. of the District of Columbia*, 695 A.2d 1164, 1997 D.C. App. LEXIS 119 (1997).

Review.

In reviewing the adoption by the city council of two pieces of emergency legislation amending the Comprehensive Merit Personnel Act, the Court of Appeals was to give deference to the counsel's definition and determination of "emergency circumstances" and was to seek only to assure itself that the act was facially valid, that is, consistent with the legislative authority of the council in partnership with Congress. D.C. Code 1981, §§ 1-162(3), 1-242(3), 1-601.1 et seq., 1-612.4(a), 1-612.5(d, e), 1-612.11(d, i); U.S. Const. Art. 1, § 8, cl. 1. *American Federation of Government Employees v. Barry*, 459 A.2d 1045, 1983 D.C. App. LEXIS 343 (1983).

§ 1-611.12. Compensation for members of the Public Employee Relations Board.

(a) Notwithstanding any other provision of this subchapter, members of the Public Employee Relations Board shall receive compensation at the rate of \$250 per day, or \$31.25 per hour, whichever is less, while in the service of the said Board. Should a member serve in excess of 8 hours on a particular day, such member may be paid additional compensation for such period of service, to a maximum of 2 per diem payments for any consecutive 24-hour period.

(b) During the transition period a person serving on both the Board of Labor Relations and the Public Employee Relations Board shall receive compensation as provided in subsection (a) of this section.

(c) Adjustments to the rate of compensation provided in this section shall be made in accordance with § 1-611.08(b).

(Mar. 3, 1979, D.C. Law 2-139, § 1112, 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(m), (n), 27 DCR 2632.)

Section references. — This section is referred to in § 1-605.01.

Prior Codifications. — 1981 Ed., § 1-612.12.

1973 Ed., § 1-341.12.

Legislative history of Law 2-139. — For

legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 3-81. — For legislative history of D.C. Law 3-81, see Historical and Statutory Notes following § 1-602.02.

§ 1-611.13. Pay setting for fire fighters, police officers and teachers for the fiscal year ending September 30, 1979, and September 30, 1980.

(a)(1) The Mayor of the District of Columbia shall ascertain the average percentage increase to be used by the President of the United States in adjusting rates of pay (to be effective October 1, 1978, and October 1, 1979, respectively) under § 5305(a)(2) of Title 5 of the United States Code, or whether the President of the United States intends to submit to the United States Congress an alternative plan with respect to pay adjustments under § 5305(c) of Title 5 of the United States Code, and the contents of the alternative plan of the President of the United States.

(2) The Mayor of the District of Columbia shall then adjust the rates of pay in each class and service step on the salary schedule in § 5-541.01(a) and in § 38-1963 [repealed], on the 1st pay period after October 1, 1978, and October 1, 1979, respectively, to reflect the average percentage increase given to General Schedule employees. If the alternative plan of the President of the United States becomes effective as provided in § 5305 of Title 5 of the United States Code, the Mayor of the District of Columbia shall adjust the rates of pay to reflect the average percentage increase given to General Schedule employees under such alternative plan. If the alternative plan of the President of the United States is disapproved by the United States Congress, the Mayor of the District of Columbia shall adjust such rates of pay to reflect the average percentage increase of the Presidential adjustments of rates of pay under 5 U.S.C. § 5305(m).

(3) The adjustments in the rates of pay made by the Mayor of the District of Columbia under this section shall be effective on and payable for the 1st day of the 1st pay period beginning on or after October 1, 1978, and October 1, 1979, respectively, or the effective date of the alternative plan of the President of the United States, whichever is later.

(b) The rates of pay, which become effective under this section, shall be the rates of pay for each class and service step concerned, as if those rates had been set by statute, and shall remain in effect until amended by the Council of the District of Columbia.

(c) The rates of pay established under this section shall supersede and render inapplicable those corresponding rates of pay set prior to the effective date of the rates of pay set under this section.

(d) The rates of pay that take effect under this section shall be published in the District of Columbia Register.

(e)(1) Retroactive compensation or salary shall be paid by reason of the amendments made by this chapter only in the case of an individual in the service of the District of Columbia government, the Board of Education of the District of Columbia, or of the United States (including service in the armed forces of the United States) on the effective date of this section: Except, that such retroactive compensation or salary shall be paid:

(A) To any employee covered by this section who retired during the period beginning on the 1st day of the 1st pay period which began on or after

October 1, 1978, and October 1, 1979, respectively, or the effective date of the alternative plan of the President of the United States, whichever is later, and ending on the effective date of this chapter for services rendered during such period; and

(B) In accordance with the provisions of subchapter VIII of Chapter 55 of Title 5 of the United States Code (relating to settlement of accounts of deceased employees), for services rendered during the period beginning on the 1st pay period which began on or after October 1, 1978, or October 1, 1979, respectively, or the effective date of the alternative plan of the President of the United States, whichever is later, and ending on the effective date of this chapter by any such employee who dies during such period.

(2) For the purpose of this subsection, service in the armed forces of the United States in the case of an individual relieved from training and service in the armed forces of the United States, or discharged from hospitalization following such training and service, shall include the period provided by law for the mandatory restoration of such individual to a position in or under the municipal government of the District of Columbia.

(3) For the purpose of determining the amount of insurance for which an individual is eligible under the provisions of Chapter 87 of Title 5 of the United States Code (relating to government employees' group life insurance), all changes in rates of compensation or salary which result from the enactment of this chapter shall be held and considered to be effective as of the effective date of this chapter.

(f) The process, as set forth in subsection (a) of this section, whereby the salaries of the District of Columbia police, fire fighters, and teachers are adjusted in accordance with the rates of pay for federal General Schedule employees, shall be in effect only for the period commencing on October 1, 1978, and ending on September 30, 1980.

(Mar. 3, 1979, D.C. Law 2-139, § 1114, 25 DCR 5740; Apr. 30, 1988, D.C. Law 7-104, § 36(b), 35 DCR 147.)

Section references. — This section is referred to in § 1-636.02.

Prior Codifications. — 1981 Ed., § 1-612.13.

1973 Ed., § 1-341.14.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 7-104. — For legislative history of D.C. Law 7-104, see Historical and Statutory Notes following § 1-604.08.

References in text. — The references to 5 U.S.C. § 5305 in (a)(1) and (a)(2) are to a former § 5305 which was omitted in a general revision by the Act of Nov. 5, 1990, P.L. 101-509, Title V, § 529, 104 Stat. 1429.

§ 1-611.14. Classification policy; grade levels; publication required; public hearing.

(a) For the period beginning October 1, 1980, and ending on the last day of the pay period that contains September 30, 1981, the basic pay for an employee in the Career or Excepted Service shall not exceed \$50,112.50 per annum.

(b) For the period beginning October 1, 1980, and ending on the last day of the pay period that contains September 30, 1981, or until an executive pay

plan is established by the Council pursuant to § 1-610.33, the basic pay for an employee in the Executive Service shall not exceed \$50,112.50 per annum.

(c) For the period beginning October 1, 1980, and ending September 30, 1981, the basic pay for an employee of the Board of Education shall not exceed \$50,112.50 per annum: Except, that of the Superintendent of Schools, which shall not exceed \$55,400.00 per annum.

(d) For the period beginning October 1, 1980, and ending September 30, 1981, the basic pay for educational employees under the Board of Trustees of the University of the District of Columbia whose basic pay as of September 30, 1980, is \$50,112.50 per annum or above shall not be increased, nor shall the basic rate of pay of an employee whose basic pay is less than \$50,112.50 per annum be paid at a rate in excess of that amount.

(Mar. 3, 1979, D.C. Law 2-139, § 1115, as added Mar. 4, 1981, D.C. Law 3-130, § 2(g), 28 DCR 277; Apr. 12, 2000, D.C. Law 13-91, § 104(a), 47 DCR 520.)

Prior Codifications. — 1981 Ed., § 1-612.14.

Effect of amendments. — D.C. Law 13-91, in subsec. (b), substituted “§ 1-611.53” for “§ 1-612.7”.

Legislative history of Law 3-130. — Law 3-130 was introduced in Council and assigned Bill No. 3-377, which was referred to the Committee on Government Operations. The Bill

was adopted on first and second readings on November 25, 1980 and December 9, 1980, respectively. Signed by the Mayor on January 7, 1981, it was assigned Act No. 3-339 and transmitted to both Houses of Congress for its review.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-602.03.

§ 1-611.15. Waiver of compensation.

An individual officer or employee of the District of Columbia government entitled to compensation under this subchapter may decline to accept all or any part of such compensation by a waiver signed and filed with the Director of Personnel. The waiver may be revoked in writing at any time. Payment of the compensation waived may not be made for the period during which the waiver was in effect.

(Mar. 3, 1979, D.C. Law 2-139, § 1116, as added Mar. 4, 1981, D.C. Law 3-130, § 2(g), 28 DCR 277.)

Cross references. — Gross income, deductions, see § 47-1803.03.

Prior Codifications. — 1981 Ed., § 1-612.15.

Legislative history of Law 3-130. — For legislative history of D.C. Law 3-130, see Historical and Statutory Notes following § 1-611.14.

§ 1-611.16. Pay limitations under other laws.

(a) Notwithstanding the provisions of § 2-1605 or § 23-1306, or any other provision or law, no employee of the District of Columbia government shall be authorized to receive pay in excess of that provided for in this subchapter, and any such provision of law that is inconsistent with this section shall be deemed superseded to the extent of such inconsistency.

(b) No employee of the District of Columbia shall be paid at an annualized rate that is higher than the maximum salary for the highest pay grade for which the employee's position is classified.

(Mar. 3, 1979, D.C. Law 2-139, § 1117, as added June 11, 1981, D.C. Law 4-7, § 2, 28 DCR 1672; Apr. 12, 2000, D.C. Law 13-91, § 104(b), 47 DCR 520; Mar. 14, 2012, D.C. Law 19-115, § 2(i), 59 DCR 461.)

Cross references. — Board of elections and ethics, powers and duties, see § 1-1001.05.

Prior Codifications. — 1981 Ed., § 1-612.16.

Effect of amendments. — D.C. Law 13-91 deleted “§ 2-309, § 2-327(a),” preceding “§ 1-2705.”

D.C. Law 19-115 designated the existing text as subsec. (a); and added subsec. (b).

Legislative history of Law 4-7. — Law 4-7 was introduced in Council and assigned Bill No. 4-38, which was referred to the Committee

on Government Operations. The Bill was adopted on first and second readings on March 10, 1981 and March 24, 1981, respectively. Signed by the Mayor on April 9, 1981, it was assigned Act No. 4-18 and transmitted to both Houses of Congress for its review.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-602.03.

Legislative history of Law 19-115. — For history of Law 19-115, see notes under § 1-608.01.

§ 1-611.17. Employee deferred compensation program established.

There is established an employee deferred compensation program as provided in the Deferred Compensation Act of 1984.

(Mar. 3, 1979, D.C. Law 2-139, § 1118, as added Sept. 26, 1984, D.C. Law 5-118, § 6(a), 31 DCR 4034.)

Cross references. — Employee deferred compensation program, see § 47-3601 et seq.

Prior Codifications. — 1981 Ed., § 1-612.17.

Legislative history of Law 5-118. — Law 5-118 was introduced in Council and assigned Bill No. 5-177, which was referred to the Committee on Finance and Revenue. The Bill was

adopted on first and second readings on June 26, 1984 and July 10, 1984, respectively. Signed by the Mayor on July 13, 1984, it was assigned Act No. 5-170 and transmitted to both Houses of Congress for its review.

References in text. — The “Deferred Compensation Act of 1984,” referred to at the end of the section, is D.C. Law 5-118.

§ 1-611.18. Housing bonus; District of Columbia employees. [Repealed].

Repealed.

(Mar. 3, 1979, D.C. Law 2-139, § 1117, as added Mar. 16, 1989, D.C. Law 7-203, § 2(e), 36 DCR 450; Aug. 17, 1991, D.C. Law 9-33, § 2, 38 DCR 4222.)

Prior Codifications. — 1981 Ed., § 1-612.18.

Legislative history of Law 9-19. — Law 9-19 was introduced in Council and assigned Bill No. 9-205. The Bill was adopted on first and second readings on May 7, 1991, and June 4, 1991, respectively. Signed by the Mayor on June 21, 1991, it was assigned Act No. 9-43 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-33. — Law 9-33 was introduced in Council and assigned Bill No. 9-215, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 4, 1991, and June 18, 1991, respectively. Signed by the Mayor on July 2, 1991, it was assigned Act No. 9-60 and transmitted to both Houses of Congress for its review.

§ 1-611.19. Pre-tax benefits programs.

(a)(1) The Mayor may establish certain tax-favored and pre-tax benefits

programs as are allowed by the Internal Revenue Code of 1954 (26 U.S.C. § 1 et seq.) and the regulations and interpretations thereunder, including sections 120, 125, 127, 129, and 132 of the Internal Revenue Code.

(2) Employee contributions to benefits programs established pursuant to this chapter, including the District of Columbia Employees Health Benefits Program, may be made on a pre-tax basis in accordance with the requirements of the Internal Revenue Code and, to the extent permitted by the Internal Revenue Code, such pre-tax contributions shall not effect a reduction of the amount of any other retirement, pension, or other benefits provided by law. To the extent permitted by the Internal Revenue Code, any amount of contributions made on a pre-tax basis shall be included in the employee's contributions to existing life insurance, retirement system, and for any other District government program keyed to the employee's scheduled rate of pay, but shall not be included for the purpose of computing federal or District income tax withholdings, including F.I.C.A., on behalf of any such employee.

(b) The Mayor may enter into an agreement with any personnel authority or independent agency to establish eligibility to participate in any benefits program established under this section.

(c) The Mayor may select one or more contractors to provide such services as may be required to implement any tax-favored program or pre-tax benefits programs in accordance with the provisions of Chapter 3 of Title 2.

(d) The Mayor shall, pursuant to subchapter I of Chapter 5 of Title 2, issue rules to implement the provisions of this chapter. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved. Nothing in this section shall affect any requirements imposed upon the Mayor by subchapter I of Chapter 5 of Title 2.

(Mar. 3, 1979, D.C. Law 2-139, § 1119, as added Mar. 16, 1993, D.C. Law 9-198, § 2, 39 DCR 9209.)

Prior Codifications. — 1981 Ed., § 1-612.19.

Legislative history of Law 9-198. — Law 9-198, the "District of Columbia Government Comprehensive Merit Personnel Act of 1978 Employee Benefits Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-337, which was referred to the Committee

on Government Operations. The Bill was adopted on first and second readings on October 6, 1992, and November 4, 1992, respectively. Signed by the Mayor on November 25, 1992, it was assigned Act No. 9-323 and transmitted to both Houses of Congress for its review. D.C. Law 9-198 became effective on March 16, 1993.

§ 1-611.20. Mandatory direct deposit.

(a) Notwithstanding any other provision of law, the only method for the receipt of salary, wages, or any other compensation, and retirement payments by any District of Columbia employee or retiree, whether compensated by the District with District funds or federal funds, shall consist of one of the following:

(1) Direct deposit through electronic funds transfer to a checking, savings, or account designated by the employee or retiree; or

(2) The delivery of the check by U.S. mail to the employee's or retiree's place of residence.

(b) The Mayor is authorized to issue rules to implement this section.

(March 3, 1979, D.C. Law 2-139, § 1120, as added Mar. 20, 1998, D.C. Law 12-60, § 601, 44 DCR 7378; Nov. 19, 1997, 111 Stat. 2185, Pub. L. 105-100, § 156.)

Prior Codifications. — 1981 Ed., § 1-612.20.

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 2(a) of Comprehensive Merit Personnel Act Pilot Program Temporary Amendment Act of 1997 (D.C. Law 12-47, April 27, 1998, law notification 45 DCR 1508).

For temporary (225 day) addition, see § 601 of Fiscal Year 1998 Revised Budget Support Temporary Act of 1997 (D.C. Law 12-59, March 20, 1998, law notification 45 DCR 2094).

Emergency legislation. — For temporary addition of section, see § 2(a) of the Comprehensive Merit Personnel Act Pilot Program Emergency Amendment Act of 1997 (D.C. Act 12-120, August 1, 1997, 44 DCR 4643), and see § 2(a) of the Comprehensive Merit Personnel

Act Pilot Program Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-178, October 30, 1997, 44 DCR 6946).

For temporary addition of section, see § 601 of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6197), and see § 601 of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Legislative history of Law 12-60. — For legislative history of D.C. Law 12-60, see Historical and Statutory Notes following § 1-611.08.

Editor's notes. — Application of Law 12-60: Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

§ 1-611.21. Personnel authority pilot programs.

(a) Notwithstanding any other provision of this subchapter, or any other provision of law or regulation, and consistent with § 1-204.22, the Mayor may implement pilot personnel programs in the areas of classification and compensation in the Department of Employment Services, the Department of Recreation and Parks and the Office of Personnel. Pilot programs may be established during any control period as defined in § 47-393, to help ensure successful implementation of the transformation of the District government workforce.

(b) The Mayor may issue rules and regulations to implement these programs.

(Mar. 3, 1979, D.C. Law 2-139, § 1121, as added June 10, 1998, D.C. Law 12-124, § 101(n)(7), 45 DCR 2464.)

Prior Codifications. — 1981 Ed., § 1-612.21.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

References in text. — Pursuant to Mayor's Order 2000-20, the agency formerly known as the Department of Recreation and Parks shall be known as the Department of Parks and Recreation.

Construction of Law 12-124. — Section

301 of D.C. Law 12-124 provided that nothing in the act shall be construed as superseding the provisions of the National Capital Revitalization and Self-Government Improvement Act of 1997, approved August 5, 1997 (Public Law 105-33; 111 Stat. 712), except that § 47-395.04(b)(3) is expressly superseded. Further, nothing in the act shall be construed as superseding the provisions of § 47-391.01 et seq. or of § 164 of the District of Columbia Appropriations Act, 1998, approved November 19, 1997 (Public Law 105-100; 111 Stat. 2160).

Editor's notes. — Applicability of § 101(n) of D.C. Law 12-124; Section 401(c) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-

264, provided that § 101(h), (l), (m), (n), (o)(2) through (5), (q), (r), (t), (u), (w), and (y) of the act shall apply as of October 21, 1998.

Subchapter XI-A. Mayor and Council Compensation Advisory Commission.

§ 1-611.51. Establishment of the Mayor and Council Compensation Advisory Commission.

The Mayor and Council Compensation Advisory Commission ("Commission") is established to determine the proper compensation of elected officials in the District of Columbia.

(Mar 3, 1979, D.C. Law 2-139, § 1151, as added Mar. 14, 2007, D.C. Law 16-295, § 2(b), 54 DCR 1092.)

Legislative history of Law 16-295. — Law 16-295, the "Mayor and Council Compensation Adjustment and Compensation Advisory Commission Establishment Amendment Act of 2006", was introduced in Council and assigned Bill No. 16-1002, which was referred to Committee on the Whole. The Bill was adopted on first and second readings on November 14,

2006, and December 5, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-654 and transmitted to both Houses of Congress for its review. D.C. Law 16-295 became effective on March 14, 2007.

Editor's notes. — Section 7087 of D.C. Law 17-219 repealed section 3 of D.C. Law 16-295.

§ 1-611.52. Composition and term.

(a) The Commission shall consist of 5 voting members and one nonvoting member as follows:

(1) Two members appointed by the Mayor with the advice and consent of the Council;

(2) Three members appointed by the Council by resolution; and

(3) The Director of the Office of Personnel, or his or her designee, as an ex officio nonvoting member.

(b) The Chairperson of the Commission shall be selected the voting members.

(c) Commission members shall serve a 3-year term; except, that the terms shall be staggered such that the first member appointed by the Mayor shall serve a one-year term and the first 2 members appointed by the Council shall each serve a 2-year term, with all other and subsequent appointments serving a 3-year term. A member is eligible for reappointment.

(d)(1) Commission members shall be private citizens generally recognized for their knowledge and experience in management and compensation and have been residents of the District for at least 5 years.

(2) The Mayor, members of the Council, and officers and employees of the District of Columbia or the federal government shall not be eligible for appointment to the Commission.

(e) The Commission shall establish rules and procedures as the Commission shall determine.

(f) Any vacancy on the Commission shall be filled in the same manner as the

original appointment. A person appointed to fill a vacancy shall serve the remainder of the unexpired term of the original appointee.

(g) All members of the Commission shall serve without compensation, but may be reimbursed for reasonable actual expenses incurred in the performance of official duties, pursuant to rules issued by the Mayor in accordance with § 1-611.08.

(Mar 3, 1979, D.C. Law 2-139, § 1152, as added Mar. 14, 2007, D.C. Law 16-295, § 2(b), 54 DCR 1092.)

Legislative history of Law 16-295. — For Law 16-295, see notes following § 1-611.51.

§ 1-611.53. Duties.

The Commission shall:

(1) Conduct an annual review examining the best practices in compensation and benefits for mayors and members of the Council and other elected officials in the surrounding Washington Metropolitan Area, as well as in comparable jurisdictions in the country;

(2) Study the feasibility of allowing a Councilmember to elect between engaging in employment, whether as an employee or as a self-employed individual, or holding a position other than the position as Councilmember for which the member is compensated in an amount in excess of his or her actual expenses and authorizing additional compensation for Councilmembers who agree not to engage in outside employment; and

(3) Develop recommendations for changes in compensation levels for the Mayor or Councilmembers, or a recommendation that no changes be made, based on the review and study conducted pursuant to paragraphs (1) and (2) of this section and:

(A) The duties and level of responsibilities of each position;

(B) The current compensation for the position and the length of time since the last compensation change;

(C) Any change in the cost of living since the last compensation change;

(D) Salary trends for positions with analogous duties and responsibilities, both within government and in the private sector;

(E) Budget limitations;

(F) The information required by § 1-611.09(b)(2)(A) and (B); and

(G) Any other factors it considers to be reasonable, appropriate, and in the public interest.

(Mar 3, 1979, D.C. Law 2-139, § 1153, as added Mar. 14, 2007, D.C. Law 16-295, § 2(b), 54 DCR 1092.)

Legislative history of Law 16-295. — For Law 16-295, see notes following § 1-611.51.

§ 1-611.54. Reports.

(a) On February 1 of each odd numbered year, the Commission shall submit

to the Council, the Mayor, and each Councilmember a draft act, together with a report explaining its recommendations regarding compensation for the Mayor, the Chairman, and individual Councilmembers; provided, that the salary of the Chairman shall be pursuant to § 1-204.03(d). The Commission shall also make the report available to the general public.

(b) The Commission may make recommendations as to salaries for other District of Columbia elected or appointed officials.

(Mar 3, 1979, D.C. Law 2-139, § 1154, as added Mar. 14, 2007, D.C. Law 16-295, § 2(b), 54 DCR 1092.)

Legislative history of Law 16-295. — For Law 16-295, see notes following § 1-611.51.

§ 1-611.55. Meetings and hearings.

(a) The Commission shall meet as frequently as the proper and efficient discharge of its duties may require. A majority of the voting members shall constitute a quorum. The Commission may act by an affirmative vote of a majority of its voting members.

(b) Other than executive sessions to consider privileged matters, the meetings of the Commission shall be open to the public. The discussion of compensation shall not be a privileged matter.

(c) An executive meeting may be convened by a vote of a majority of the voting members of the Commission, upon good cause shown.

(d) The Commission shall hold at least 2 public hearings to take public testimony on any proposed compensation changes, including from compensation experts from the public and private sectors.

(e) The Commission shall maintain minutes of the meetings.

(Mar 3, 1979, D.C. Law 2-139, § 1155, as added Mar. 14, 2007, D.C. Law 16-295, § 2(b), 54 DCR 1092.)

Legislative history of Law 16-295. — For Law 16-295, see notes following § 1-611.51.

§ 1-611.56. Powers.

(a) All offices, agencies, and instrumentalities of the District government shall fully cooperate with the Commission and provide requested information and documents.

(b) Subject to the availability of appropriations, the Commission may hire or contract for necessary staff and technical assistance or may require any office, agency, or instrumentality of the District government to provide such assistance.

(Mar 3, 1979, D.C. Law 2-139, § 1156, as added Mar. 14, 2007, D.C. Law 16-295, § 2(b), 54 DCR 1092.)

Legislative history of Law 16-295. — For Law 16-295, see notes following § 1-611.51.

§ 1-611.57. Council action.

Upon receiving the draft act and report from the Commission as required by § 1-611.54, the Chairman shall introduce the proposed legislation at the next legislative session. The Council shall hold a public hearing on the legislation within 6 months of its introduction.

(Mar 3, 1979, D.C. Law 2-139, § 1157, as added Mar. 14, 2007, D.C. Law 16-295, § 2(b), 54 DCR 1092.)

Cross references. — Merit system, effective date provisions, see § 1-636.02.

Legislative history of Law 16-295. — For Law 16-295, see notes following § 1-611.51.

*Subchapter XII. Hours of Work; Legal Holidays; Leave.***§ 1-612.01. Hours of work.**

(a) A basic administrative workweek of 40 hours is established for each full-time employee and the hours of work within that workweek shall be performed within a period of not more than 6 of any 7 consecutive days; except, that:

(1) The basic workweek for uniformed members of the Firefighting Division of the District of Columbia Fire Department shall not exceed 48 hours and the Division shall operate under a 2-shift system with all hours of duty of either shift being consecutive; and

(2) The basic workweek, hours of work, and tour of duty for all employees of the Board of Education and the Board of Trustees of the University of the District of Columbia shall be established under rules and regulations issued by the respective Boards; provided, that the basic work scheduling for all employees in recognized collective bargaining units to these established tours of duty shall be subject to collective bargaining, and collective bargaining provisions related to scheduling shall take precedence over conflicting provisions of this subchapter.

(b) Except when the Mayor determines that an organization would be seriously handicapped in carrying out its functions or that costs would be substantially increased, tours of duty shall be established to provide, with respect to each employee in an organization, that:

(1) Assignments to tours of duty are scheduled in advance over periods of not less than 1 week;

(2) The basic 40 hour workweek is scheduled on 5 days, Monday through Friday when practicable, and the 2 days outside the basic workweek are consecutive;

(3) The working hours in each day in the basic workweek are the same;

(4) Overtime shall be paid in accordance with Title XVII and the Fair Labor Standards Act of 1938, approved June 25, 1938 (52 Stat. 1060; 29 U.S.C. § 201 et seq.);

(5) The occurrence of holidays may not affect the designation of the basic workweek; and

(6) Breaks in working hours of more than 1 hour may not be scheduled in

a basic workday except under rules and regulations on flexible work schedules as provided in subsection (e) of this section.

(c) Special tours of duty, of not less than 40 hours, may be established to enable employees to take courses in nearby colleges, universities or other educational institutions that will equip them for more effective work in the District government. Premium pay may not be paid to an employee solely because his or her special tour of duty results in his or her working on a day or at a time of day for which premium pay is otherwise authorized.

(d) To the maximum extent practicable, time to be spent by an employee in a travel status away from his or her official duty station shall be scheduled within the regularly scheduled workweek of the employee.

(e) The Mayor shall issue rules and regulations governing hours of work. Such rules and regulations shall provide for the use of flexible work schedules within the 40 hour workweek when such schedules are considered both practicable and feasible.

(1973 Ed., § 1-342.1; Mar. 3, 1979, D.C. Law 2-139, § 1201, 25 DCR 5740; Feb. 24, 1987, D.C. Law 6-177, § 3(p), 33 DCR 7241; Aug. 1, 1996, D.C. Law 11-152, § 302(o), 43 DCR 2978; June 10, 1998, D.C. Law 12-124, § 101(o)(1), 45 DCR 2464; Apr. 12, 2005, D.C. Law 15-334, § 2(a), 52 DCR 2012; Sept. 24, 2010, D.C. Law 18-223, § 1032(a), 57 DCR 6242.)

Cross references. — Retirement of public school teachers, annuities, computation, years of service, see § 38-2021.08.

Prior Codifications. — 1981 Ed., § 1-613.1.

1973 Ed., § 1-342.1.

Effect of amendments. — D.C. Law 15-334 rewrote subsec. (a)(2) which had read as follows: “(2) The basic workweek and hours of work for all employees of the Board of Education and the Board of Trustees of the University of the District of Columbia shall be established under rules and regulations issued by the respective Boards; provided, however, that the basic work scheduling for all employees in recognized collective bargaining units shall be subject to collective bargaining, and collective bargaining agreements shall take precedence over the provisions of this subchapter.”

D.C. Law 18-223 rewrote subsec. (b)(4), which had read as follows: “(4) The basic nonovertime workday may not exceed 8 hours;”

Temporary Addition of Section. — Sections 2 to 4 of D.C. Law 19-1 added sections to read as follows:

“Sec. 2. Furloughing of employees.

“(a)(1) Notwithstanding any other District law or regulation, and except as provided in subsection (b) of this section and section 3, the personnel authority of each subordinate and independent agency and instrumentality of the District of Columbia government shall furlough each of its full-time employees for 4 legal public holidays without pay during the fiscal year

ending September 30, 2011, and each of its part-time employees with a scheduled tour of duty for the appropriate pro-rated amount of furlough hours for the 4 furlough days.

“(2) Except as provided in subsection (b) of this section, the unpaid furlough days required by this act shall be scheduled on the following legal public holidays, as that term is described in section 1202 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-612.02):

“(A) Washington’s Birthday, Monday, February 21, 2011;

“(B) District of Columbia Emancipation Day, Friday, April 15, 2011;

“(C) Memorial Day, Monday, May 30, 2011; and

“(D) Independence Day, Monday, July 4, 2011.

“(b)(1) Each agency and instrumentality shall furlough each covered employee on the designated legal public holidays, unless doing so:

“(A) Would impair the ability of the agency or instrumentality to fulfill its essential or emergency public health or public safety functions;

“(B) Would impair the ability of the agency or instrumentality to fulfill its mission;

“(C) Is not possible because the holiday is not part of an employee’s pay period; or

“(D) Is not legally permissible.

“(2) If a covered employee cannot be furloughed on any of the legal public holidays

listed in subsection (a)(2) of this section due to any of the reasons listed in paragraph (1) of this subsection, as determined by the Mayor, the employing agency or instrumentality, in consultation with the applicable personnel authority, shall schedule the furlough day on an alternate date in the same pay period that does not impair the ability of the agency or instrumentality to fulfill its mission, as determined by the Mayor. The District of Columbia Public Schools shall not furlough a classroom teacher on a date when there is classroom instruction during an instructional period.

“(3)(A) Notwithstanding paragraphs (1) and (2) of this subsection, the 4 furlough days required under subsection (a) of this section may be scheduled on alternate dates in the same or subsequent pay periods for covered employees, including correctional officers, working in an agency listed in this paragraph; provided, that each of the covered employees is furloughed the required 4 days by July 31, 2011. This paragraph shall apply to the:

“(i) Department of Youth Rehabilitation Services employees at the Youth Services Center and at New Beginnings;

“(ii) Department of Corrections correctional personnel at the Central Detention Facility;

“(iii) Office of Unified Communications employees; and

“(iv) Office of the Chief Medical Examiner employees.

“(B) The Mayor shall have discretion in the application of the furlough provided under this paragraph.

“(c) To the extent possible, employees who are newly hired after any of the 4 legal public holidays designated as furlough days shall be furloughed during the same pay period of the legal public holiday.

“(d) Unless a subordinate or independent agency or instrumentality has authority to adopt rules governing furloughs and has adopted such rules, each agency and instrumentality is subject to the furlough rules published at 6 DCMR B §§ 2438 through 2446 and 2499, or emergency rules published by the District of Columbia Department of Human Resources to implement the provisions of this act.

“(e)(1) Notwithstanding any other District law or regulation, each employee shall be provided not less than 15 days written notice before the employee's first furlough date and the provision of 15 days written notice shall be sufficient notice to permit the furloughing of the employee on that first furlough date.

“(2) If an employing agency or instrumentality is unable to give notice in accordance with paragraph (1) of this subsection for the unpaid furlough day specified by subsection (a)(2)(A) of this section, or schedule the furlough day as required by this act, the employing agency or instrumentality, in consultation with the appli-

cable personnel authority, shall schedule the furlough day on an alternate date in any subsequent pay period on or before July 31, 2011.

“Sec. 3. Scope of coverage.

“(a) This act shall apply to all subordinate and independent agencies and instrumentalities, except the following agencies or instrumentalities:

“(1) Not-for-Profit Hospital Corporation;

“(2) District of Columbia Housing Authority;

“(3) District of Columbia Housing Finance Agency;

“(4) Washington Convention and Sports Authority; and

“(5) District of Columbia Water and Sewer Authority.

“(b) The following positions shall be exempt from the coverage of this act:

“(1) Positions in an agency that is the subject of a court order specifically excluding the positions from furlough actions; and

“(2) Certain essential or emergency positions, as determined by the Mayor by executive order, within the Metropolitan Police Department and the Fire and Emergency Medical Services Department.

“Sec. 4. Transfer of funds. All furlough cost savings associated with special purpose revenue or dedicated taxes shall be transferred to the unrestricted fund balance of the General Fund of the District of Columbia.”

Section 6(b) of D.C. Law 19-1 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 1032(a) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

For temporary (90 day) addition of sections, see §§ 2 to 4 of Balanced Budget Holiday Furlough Emergency Act of 2011 (D.C. Act 19-3, February 2, 2011, 58 DCR 1241).

For temporary (90 day) amendment of § 2 of D.C. Act 19-3, see § 2 of Public Safety Civilian Emergency Personnel Furlough Exemption Emergency Amendment Act of 2011 (D.C. Act 19-28, March 1, 2011, 58 DCR 2587).

For temporary (90 day) addition of sections, see §§ 2 to 4 of Balanced Budget Holiday Furlough Congressional Review Emergency Act of 2011 (D.C. Act 19-50, April 27, 2011, 58 DCR 3874).

For temporary (90 day) addition of section, see § 5 of Fiscal Year 2012 Second Revised Budget Request Emergency Adjustment Act of 2012 (D.C. Act 19-382, June 20, 2012, 59 DCR 7760).

For temporary (90 day) addition of section, see § 5 of Fiscal Year 2012 Second Revised Budget Request Congressional Review Emergency Adjustment Act of 2012 (D.C. Act 19-406, July 20, 2012, 59 DCR 9124).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 6-177. — For legislative history of D.C. Law 6-177, see Historical and Statutory Notes following § 1-601.02.

Legislative history of Law 11-152. — For legislative history of D.C. Law 11-152, see Historical and Statutory Notes following § 1-602.02.

Legislative history of Law 12-124. — Law 12-124, the “Omnibus Personnel Reform Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-44, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on February 3, 1998, and March 17, 1998, respectively. Signed by the Mayor on April 1, 1998, it was assigned Act No. 12-326 and transmitted to both houses of Congress for its review. D.C. Law 12-124 became effective on June 10, 1998.

Legislative history of Law 15-334. — Law 15-334, the “Labor Relations and Collective Bargaining Amendment Act of 2004,” was introduced in Council and assigned Bill No. 15-913 which was referred to the Committee on Public Interest. The Bill was adopted on first and second readings on December 7, 2004, and December 21, 2004, respectively. Signed by the Mayor on January 19, 2005, it was assigned Act No. 15-747 and transmitted to both Houses of

Congress for its review. D.C. Law 15-334 became effective on April 12, 2005.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 1-301.78.

Short title. — Short title: Section 1031 of D.C. Law 18-223 provided that subtitle D of title I of the act may be cited as the “Overtime Work Hours Amendment Act of 2010”.

Editor’s notes. — Repeal of § 3 of Law 6-177: Section 4(b) of D.C. Law 6-177 provided that the provisions of § 3 are repealed on the 1st day following the 36-month period after February 24, 1987.

Repeal of § 4(b) of Law 6-177: Section 3(b) of D.C. Law 8-74, effective March 15, 1990, provided that § 4(b) of D.C. Law 6-177 is repealed.

Applicability of § 101(l)(1) of D.C. Law 12-124: Section 401(b) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(o)(1) of the act shall apply upon the enactment by the United States Congress of an amendment to 29 U.S.C. § 207 of the Fair Labor Standards Act to exempt the District of Columbia government from the applicability of the overtime provisions when employees are on a compressed work schedule up to 80 hours per pay period. Since Congress has not, as of date, enacted such an amendment, the amendments made by section 101(o)(1) of D.C. Law 11-210 have not been implemented.

Since Congress has not, as of date, enacted such an amendment, the amendments made by section 101(o)(1) of D.C. Law 12-124 have not been implemented.

CASE NOTES

In general.

Public Employee Relations Board was justified in concluding that union’s proposals about certain categories of school employees intruded upon management prerogatives and were non-negotiable or were not mandatory subjects of bargaining; proposals related to basic work week, promotions, and assignment and transfer of employees. D.C. Code 1981, §§ 1-613.1(a)(2), 1-618.8(a)(2, 5). *Drivers, Chauffeurs & Helpers Local Union No. 639 v. District of Columbia*, 631 A.2d 1205, 1993 D.C. App. LEXIS 237 (1993).

Beginning date of school year and Good Fri-

day’s status as holiday were not mandatory subjects of collective bargaining, and thus Board of Education’s determination of issues without consulting teachers’ union did not constitute unfair labor practice; administrative agency was entitled to determine that Board’s right to establish educational policy outweighed incidental impact of its calendar decisions upon teachers’ interests. D.C. Code 1981, §§ 1-613.1(a), 1-618.8(a), 31-102. *Public Employee Relations Bd. v. Washington Teachers’ Union Local 6*, 556 A.2d 206, 1989 D.C. App. LEXIS 51 (1989).

§ 1-612.02. Legal public holidays.

(a) Legal public holidays are as follows:

- (1) New Year’s Day, January 1st of each year;
- (2) Dr. Martin Luther King, Jr.’s Birthday, the 3rd Monday in January of each year;
- (3) Washington’s Birthday, the 3rd Monday in February of each year;
- (4) Memorial Day, the last Monday in May of each year;

- (5) Independence Day, July 4th of each year;
- (6) Labor Day, the 1st Monday in September of each year;
- (7) Columbus Day, the 2nd Monday in October of each year;
- (8) Veterans Day, November 11th of each year;
- (9) Thanksgiving Day, the 4th Thursday in November of each year;
- (10) Christmas Day, December 25th of each year; and
- (11) Beginning in the year 2007, District of Columbia Emancipation Day, April 16th of each year.

(b) For purposes of pay and leave with respect to a legal public holiday listed in subsection (a) of this section and any other day designated to be a legal holiday by the Mayor, the following rules and regulations shall apply:

(1) For full-time employees whose basic workweek is Monday through Friday, if a legal holiday occurs on Saturday, the Friday immediately before is a legal public holiday and if a legal holiday occurs on Sunday, the Monday immediately following is a legal public holiday;

(2) For full-time employees whose basic workweek is other than Monday through Friday, except the regular weekly nonworkday administratively scheduled for the employee instead of Sunday, the workday immediately before that regular weekly nonworkday is a legal public holiday for the employee; and

(3) For part-time employees, a legal holiday or a day designated as a holiday under paragraph (1) of this subsection which falls on the employee's regularly scheduled workday is a legal public holiday for the employee.

(c) January 20th of each 4th year starting in 1981, Inauguration Day, is a legal public holiday for the purpose of pay and leave of employees scheduled to work on that day. When January 20th of any 4th year falls on Sunday, the next succeeding day selected for the public observance of the inauguration of the President is a legal public holiday for the purposes of this section.

(d) When an employee, having a regularly scheduled tour of duty is relieved or prevented from working on a day District agencies are closed by order of the Mayor, he or she is entitled to the same pay for that day as for a day on which an ordinary day's work is performed.

(e) The Mayor shall prescribe rules and regulations governing the pay and leave of employees in connection with legal public holidays and other designated nonworkdays.

(f) The Board of Trustees of the University of the District of Columbia shall have authority to establish not more than 3 additional holidays to honor persons or events germane to academic interests.

(Mar. 3, 1979, D.C. Law 2-139, § 1202, 25 DCR 5740; Mar. 14, 1985, D.C. Law 5-155, § 2, 32 DCR 11; Feb. 24, 1987, D.C. Law 6-177, § 3(q), 33 DCR 7241; Aug. 1, 1996, D.C. Law 11-152, § 302(p), 43 DCR 2978; Apr. 3, 2001, D.C. Law 13-237, § 3(a), 48 DCR 597; Apr. 5, 2005, D.C. Law 15-288, § 3, 52 DCR 1441; Mar. 2, 2007, D.C. Law 16-191, § 95, 53 DCR 6794.)

Cross references. — Retirement of public school teachers, annuities, computation, years of service, see § 38-2021.08.

Prior Codifications. — 1981 Ed., § 1-613.2.

1973 Ed., § 1-342.2.

Effect of amendments. — D.C. Law 13-237, in the section heading, inserted "Public".

D.C. Law 15-288, in subsec. (c), designated the existing text as par. (1), and added par. (2).

D.C. Law 16-191, in subsec. (a), validated a previously made technical correction in par. (9), substituted “; and” for a period at the end of par. (10), and added par. (11); and, in subsec. (c), deleted the par. (1) designation and repealed par. (2), which had read as follows: “(2) April 16 of each year starting in 2005 shall be District of Columbia Emancipation Day, which shall be a legal public holiday for the purpose of pay and leave of employees scheduled to work on that day; provided, that in 2005 and 2006, it shall be celebrated on the date of April 16 and not on the following Monday.”

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of District of Columbia Emancipation Day Alternate Date Temporary Amendment Act of 2005 (D.C. Law 16-41, December 10, 2005, law notification 52 DCR 11037).

Temporary Addition of Section. — For temporary (225 day) addition, see § 2(a) of District of Columbia Emancipation Day Temporary Act of 2000 (D.C. Law 13-152, July 18, 2000, law notification 47 DCR 6102).

Emergency legislation. — For temporary (90 day) amendment of section, see §§ 2 and 3 of District of Columbia Emancipation Day Emergency Amendment Act of 2005 (D.C. Act 16-66, April 20, 2005, 52 DCR 4140).

For temporary (90 day) amendment, see § 2 of District of Columbia Emancipation Day Alternate Date Emergency Amendment Act of 2005 (D.C. Act 16-148, July 26, 2005, 52 DCR 7189).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 5-155. — Law 5-155 was introduced in Council and assigned Bill No. 5-322, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 7, 1984 and December 4, 1984, respectively. Signed by the Mayor on December 10, 1984, it was assigned Act No. 5-220 and

transmitted to both Houses of Congress for its review.

Legislative history of Law 6-177. — For legislative history of D.C. Law 6-177, see Historical and Statutory Notes following § 1-601.02.

Legislative history of Law 11-152. — For legislative history of D.C. Law 11-152, see Historical and Statutory Notes following § 1-602.02.

Legislative history of Law 13-237. — Law 13-237, the “District of Columbia Emancipation Day Amendment Act of 2000”, was introduced in Council and assigned Bill No. 13-631, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 8, 2000, and December 5, 2000, respectively. Signed by the Mayor on December 21, 2000, it was assigned Act No. 13-514 and transmitted to both Houses of Congress for its review. D.C. Law 13-237 became effective on April 3, 2001.

Legislative history of Law 15-288. — Law 15-288, the “District of Columbia Emancipation Day Amendment Act of 2004”, was introduced in Council and assigned Bill No. 15-827, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 9, 2004, and December 7, 2004, respectively. Signed by the Mayor on January 4, 2005, it was assigned Act No. 15-682 and transmitted to both Houses of Congress for its review. D.C. Law 15-288 became effective on April 5, 2005.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 1-325.44.

Effective date. — Section 4(b) of D.C. Law 5-155 provided that §§ 2 and 3 of the act shall take effect January 1, 1986.

Editor’s notes. — Repeal of § 3 of Law 6-177: Section 4(b) of D.C. Law 6-177 provided that the provisions of § 3 are repealed on the 1st day following the 36-month period after February 24, 1987.

Repeal of § 4(b) of Law 6-177: Section 3(b) of D.C. Law 8-74, effective March 15, 1990, provided that § 4(b) of D.C. Law 6-177 is repealed.

§ 1-612.02a. Legal private holidays.

A legal private holiday is a day on which any paid family, vacation, personal, compensatory, leave bank or unpaid leave that has been provided by the employer may be granted pursuant to subchapter XII of this chapter and Chapter 12 of Title 32 and includes the District of Columbia Emancipation Day, April 16th of each year.

(Mar. 3, 1979, D.C. Law 2-139, as added, Apr. 3, 2001, D.C. Law 13-237, § 3(b), 48 DCR 597.)

Emergency legislation. — For temporary (90 day) addition of section, see § 3(b) of District of Columbia Emancipation Day Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-20, March 16, 2001, 48 DCR 2699).

Legislative history of Law 13-237. — For Law 13-237, see notes following § 1-612.02.

Resolutions. — Resolution 14-409, the “Council Emancipation Day Delegation Emergency Resolution of 2002”, was approved effective April 19, 2002.

§ 1-612.03. Leave.

(a) All employees shall be entitled to earn annual and sick leave as provided herein, except:

(1) Educational employees under the Board of Education or Board of Trustees of the University of the District of Columbia. The leave system for such employees shall be established by rules and regulations promulgated by the respective Boards;

(2) An intermittent employee who does not have a regularly scheduled tour of duty;

(3) Elected officials;

(4) Members of boards and commissions whose pay is fixed under § 1-611.08;

(5) A temporary employee appointed for less than 90 days;

(6) Employees first hired after September 30, 1987; or

(7) Employees covered under subchapter X-A of this chapter.

(b) The days of leave are days on which an employee would otherwise work and receive pay and are exclusive of holidays and nonworkdays. The annual leave provided by this section, including annual leave that will accrue to an employee during the year, may be granted at any time during the year by the appropriate personnel authority.

(c) An employee who accepts a position excepted from these provisions under subsection (a) of this section, without a break in service, may elect either a lump-sum payment for any unused annual leave or have such leave retained for recrediting purposes if he or she returns to a position covered by these provisions.

(d) An employee who uses excess annual leave credited because of administrative error may elect to refund the amount received for the days of excess leave by lump-sum or installment payments, or to have the excess leave carried forward as a charge against later accruing annual leave, unless repayment is waived as provided under subchapter XXIX of this chapter.

(e)(1) An employee is entitled to annual leave with pay which accrues as follows:

(A) One-half day for each full biweekly pay period for an employee with less than 3 years of federal or District government service;

(B) Three-fourths day for each full biweekly pay period, except that the accrual for the last full biweekly pay period in the year is one and one-fourth days, for an employee with 3 but less than 15 years of federal or District government service; and

(C) One day for each full biweekly pay period for an employee with 15 or more years of federal or District government service.

(2) For the purposes of this subsection, an employee is deemed employed for a full biweekly pay period if he or she is employed during the days within

that period, exclusive of legal holidays and nonworkdays which fall within his or her basic administrative workweek. A part-time employee serving on a prearranged scheduled tour of duty is entitled to earn leave as provided above on a pro rata basis. Leave accrues to an employee who is not paid on the basis of biweekly pay periods on the same basis as it would accrue if the employee were paid based on biweekly pay periods. A change in the rate of accrual of annual leave by an employee under this subsection takes effect at the beginning of the pay period after the pay period, or corresponding period for an employee who is not paid on the basis of biweekly pay periods, in which the employee completed the prescribed period of service.

(f) In determining years of service for leave accrual purposes, an employee is entitled to credit for all service creditable under § 8332 of Title 5 of the United States Code for annuity purposes under Civil Service retirement. An employee who is a military retiree is entitled to credit for active military service only if his or her retirement was based on disability resulting from injury or disease received in the line of duty as a direct result of armed conflict or caused by an instrumentality of war and incurred in line of duty during a period of war as defined by §§ 101 and 301 of Title 38 of the United States Code [revised; see now 38 U.S.C. § 1101]. The determination of years of service may be made on the basis of an affidavit of the employee.

(g) An employee whose current employment is limited to less than 90 days is entitled to annual leave only after being currently employed for a continuous period of 90 days under successive temporary appointments without a break in service. After completing the 90-day period, the employee is entitled to be credited with the leave that would have accrued to him or her since the date of his or her initial temporary appointment.

(h) Annual leave which is not used by an employee accumulates for use in succeeding years until it totals not more than 20 days at the beginning of the 1st full biweekly pay period, or corresponding period for an employee who is not paid on the basis of biweekly pay periods, occurring in a calendar year.

(1) Annual leave in excess of 20 days which was accumulated under an earlier statute remains to the credit of the employee until used. The excess annual leave is reduced at the beginning of the 1st full biweekly pay period, or corresponding period for an employee who is not paid on the basis of biweekly pay periods, occurring in a year, by the amount of annual leave the employee used during the preceding year in excess of the amount which accrued during that year until the employee's accumulated leave does not exceed 20 days.

(2) Annual leave which is lost due to administrative error when the error causes a loss of annual leave otherwise accruable after June 30, 1960, exigencies of the public business when the annual leave was scheduled in advance, or sickness of the employee when the annual leave was scheduled in advance, shall be restored to the employee:

(A) Restored annual leave which is in excess of 20 days shall be credited to a separate leave account for the employee and shall be available for use by the employee for a period of 2 years. Restored leave shall be included in a lump-sum payment if unused and still available upon the separation of the employee;

(B) Annual leave otherwise accruable after June 30, 1960, which is lost because of administrative error and is not reccredited because the employee is separated before the error is discovered, is subject to credit and liquidation by lump-sum payment only if a claim therefor is filed within 3 years immediately following the date on which the error is discovered.

(i) When an individual who received a lump-sum payment for leave is reemployed before the end of the period covered by the lump-sum payment, except in a position excepted under subsection (a) of this section, he or she shall refund an amount equal to the pay covering the period between the date of reemployment and the expiration of the lump-sum period.

(j) An employee is entitled to sick leave with pay which accrues on the basis of one-half day for each full biweekly pay period: Except, that sick leave with pay accrues to a member of the Firefighting Division of the Fire Department on the basis of two-fifths of a day for each full biweekly pay period. Sick leave may not be charged to the account of a uniformed member of the Metropolitan Police Department or the Fire Department for an absence due to injury or illness resulting from the performance of duty.

(k) The annual and sick leave to the credit of a federal employee who transfers to the District government without a break in service will be transferred to the credit of the employee under the District government leave system. The annual and sick leave to the credit of an employee who transfers from a position under a different leave system(s) without a break in service shall be transferred on an adjusted basis under rules and regulations prescribed by the Mayor.

(l) An employee is entitled to leave, without loss of pay, leave, or credit for time of service, during a period of absence in which he or she is summoned, in connection with a judicial proceeding, by a court or other authority responsible for the conduct of that proceeding to serve as a juror or as a witness on behalf of any party in connection with judicial proceeding to which the United States, the District of Columbia, or a state or local government is a party.

(m) An employee is entitled to leave without loss in pay, leave, service, or performance rating for active duty, inactive-duty training (as defined in 37 U.S.C. § 101), or to engage in field coast defense training under 32 U.S.C. §§ 502 through 505 as a reserve member of the armed forces or member of the National Guard. Leave under this subsection shall not exceed 15 calendar days per fiscal year and, to the extent that it is not used in a fiscal year, shall accumulate for use in the succeeding fiscal year until it totals 15 days at the beginning of a fiscal year. In the case of part-time employment, the rate at which leave accrues under this subsection shall be a percentage of the rate prescribed above which is determined by dividing 40 into the number of hours in the regularly scheduled workweek of that employee during that fiscal year. The minimum charge for leave under this subsection is one hour, and additional charges are in multiples thereof.

(m-1) An employee who is a member of a reserve component of the armed forces, as described in 10 U.S.C. § 10101, or the National Guard, as described in 32 U.S.C. § 101 and who performs, for the purpose of providing military aid to enforce the law or for the purpose of providing assistance to civil authorities

in the protection or saving of life, property, or the prevention of injury, under the following:

(1) Federal service under 10 U.S.C. §§ 331, 332, 333, or 12406 or other provision of law, as applicable, or

(2) Full-time military service for his or her state, the District of Columbia, the Commonwealth of Puerto Rico, or a territory of the United States is entitled, during and because of such service, to leave without loss of, or reduction in, pay, leave to which he or her would be otherwise entitled, and credit for service or a performance rating. Leave granted by this paragraph shall not exceed 22 workdays in a calendar year.

(m-2) Upon the request of an employee, the period for which an employee is absent to perform service described by this subsection may be charged to the employee's accrued annual leave or to compensatory time available to the employee instead of being charged as leave to which the employee is entitled under this subsection. The period of absence may not be charged to sick leave. An employee who is a member of the National Guard of the District of Columbia is entitled to leave without limitation and without loss in pay or time for each day of a parade or encampment ordered or authorized under Title 49 of the District of Columbia Official Code. This provision covers each day of service in the National Guard, or a portion thereof, that an employee is ordered to perform by the Commanding General.

(m-3) An amount (other than travel, transportation, or per diem allowance) received by an employee for military service as a member of the reserve or National Guard for a period for which he or she is entitled to military leave shall be credited against the pay payable to the employee for the same period.

(n) An employee is entitled to not more than 3 days of leave without loss of or reduction in pay, leave or service to make arrangements for or attend the funeral or memorial service for an immediate relative who died as a result of wound, disease or injury incurred while serving as a member of the armed forces in a combat zone.

(o) The Mayor is authorized to issue necessary rules and regulations to implement the provisions of this section.

(p) In units where exclusive recognition has been granted, the Mayor or an appropriate personnel authority may enter into agreements with the exclusive bargaining agent to continue employee coverage under the provisions of this chapter while an employee(s) serves in a full-time or regular part-time capacity with a labor organization at no loss in benefits to the individual employee(s): Provided, however, that the cost to the District shall be paid by the labor organization while the employee(s) is so engaged, and: Provided, further, that this provision shall not limit the negotiability or use of official time by unit employees for the purposes of investigation, processing, and resolving grievances, complaints or any and all other similar disputes.

(q) After advising his or her supervisor, an employee is entitled to utilize up to 10 hours of administrative leave for the purpose of responding to adverse actions initiated under the provisions of subchapter XVI-A of this chapter.

(r) An employee who is a member of the District of Columbia Retirement Board shall be entitled to administrative leave, in accordance with § 1-711(c),

while engaged in the actual performance of duties vested in the Board during the employee's regularly scheduled working hours.

(Mar. 3, 1979, D.C. Law 2-139, § 1203, 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(o), 27 DCR 2632; Feb. 24, 1987, D.C. Law 6-177, § 3(r), 33 DCR 7241; Mar. 24, 1990, D.C. Law 8-97, § 3(c), 37 DCR 1046; Aug. 1, 1996, D.C. Law 11-152, § 302(q), 43 DCR 2978; June 10, 1998, D.C. Law 12-124, § 101(o)(2), 45 DCR 2464; Apr. 12, 2000, D.C. Law 13-91, § 103(q), 47 DCR 520; Oct. 19, 2002, D.C. Law 14-213, § 3(k), 49 DCR 8140; Mar. 13, 2004, D.C. Law 15-105, § 2(b), 51 DCR 881; Mar. 14, 2012, D.C. Law 19-115, § 2(j), 59 DCR 461.)

Cross references. — Health care benefits expansion, District government employees, leave, see § 32-705.

Retirement of public school teachers, annuities, computation, years of service, see § 38-202

Prior Codifications. — 1981 Ed., § 1-613.3.

1973 Ed., § 1-342.3.

Effect of amendments. — D.C. Law 13-91, in subsec. (q), substituted "subchapter XVII-A" for "subchapter XVII".

D.C. Law 14-213 rewrote subsec. (m); and added subsecs. (m-1), (m-2), and (m-3).

D.C. Law 15-105, in subsec. (m-2), validated a previously made technical correction.

D.C. Law 19-115, in subsec. (h), substituted "20 days" for "30 days".

Emergency legislation. — For temporary (90 day) amendment of section, see § 1092(b) of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 3-81. — For legislative history of D.C. Law 3-81, see Historical and Statutory Notes following § 1-602.02.

Legislative history of Law 6-177. — For legislative history of D.C. Law 6-177, see Historical and Statutory Notes following § 1-601.02.

Legislative history of Law 8-97. — Law 8-97 was introduced in Council and assigned Bill No. 8-267, which was referred to the Com-

mittee on Government Operations. The Bill was adopted on first and second readings on December 19, 1989, and January 16, 1990, respectively. Signed by the Mayor on January 26, 1990, it was assigned Act No. 8-149 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-152. — For legislative history of D.C. Law 11-152, see Historical and Statutory Notes following § 1-602.02.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-602.03.

Legislative history of Law 14-213. — For Law 14-213, see notes following § 1-603.01.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 1-301.47.

Legislative history of Law 19-115. — For history of Law 19-115, see notes under § 1-608.01.

Editor's notes. — Repeal of § 3 of Law 6-177: Section 4(b) of D.C. Law 6-177 provided that the provisions of § 3 are repealed on the 1st day following the 36-month period after February 24, 1987.

Repeal of § 4(b) of Law 6-177: Section 3(b) of D.C. Law 8-74, effective March 15, 1990, provided that § 4(b) of D.C. Law 6-177 is repealed.

Applicability of § 101(o)(2) of D.C. Law 12-124: Section 401(c) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(h), (l), (m), (n), (o)(2) through (5), (q), (r), (t), (u), (w), and (y) of the act shall apply as of October 21, 1998.

CASE NOTES

ANALYSIS

Due process.

In general.

Property interest.

Due process.

Procedures followed by District of Columbia police department in determining officer's eligi-

bility for administrative sick leave did not violate due process even if officer was not allowed to call witnesses and cross-examine government witnesses. U.S. Const. Amends. 5, 14; 5 U.S.C. § 6324(a). *District of Columbia v. Jones*, 442 A.2d 512, 1982 D.C. App. LEXIS 271 (1982).

For purposes of determining what process

was due when officer of District of Columbia police department was denied administrative sick leave status, private interest in continued receipt of pay due on administrative sick leave and which was officer's sole potential source of income during period in question was sufficient to mandate protection. U.S. Const.Amends. 5, 14; 5 U.S.C. § 6324(a). *District of Columbia v. Jones*, 442 A.2d 512, 1982 D.C. App. LEXIS 271 (1982).

Issue of whether District of Columbia police department's procedures for determining officer's entitlement to administrative sick leave adequately protected officer from risk of erroneous deprivation so as to satisfy due process could not be determined where no record was kept of meeting at which officer was denied administrative sick leave and no written guidelines outlined officer's right to administrative sick leave. U.S. Const.Amends. 5, 14; 5 U.S.C. § 6324(a). *District of Columbia v. Jones*, 442 A.2d 512, 1982 D.C. App. LEXIS 271 (1982).

Additional procedural safeguards in determination of police officer's eligibility for administrative sick leave would lessen risk of erroneous deprivation of property interest in administrative sick leave without necessarily increasing overall District of Columbia police department's administrative burdens. U.S. Const.Amends. 5, 14; 5 U.S.C. § 6324(a). *District of Columbia v. Jones*, 442 A.2d 512, 1982 D.C. App. LEXIS 271 (1982).

In determining police officer's eligibility for administrative sick leave, police department was required to afford officer procedural process that was essentially fair, and also to preserve sufficient record whereby reviewing court might ascertain fairness of procedure. U.S. Const.Amends. 5, 14; 5 U.S.C. § 6324(a). *District of Columbia v. Jones*, 442 A.2d 512, 1982 D.C. App. LEXIS 271 (1982).

When District of Columbia police department seeks to determine officer's eligibility for administrative sick leave, "essentially fair hearing" is one characterized by fundamental elements of procedural due process. U.S. Const.Amends. 5, 14; 5 U.S.C. § 6324(a). *District of Columbia v. Jones*, 442 A.2d 512, 1982 D.C. App. LEXIS 271 (1982).

District of Columbia police officer is entitled to an informal oral hearing before his right to administrative sick leave is finally terminated. U.S. Const.Amends. 5, 14; 5 U.S.C. § 6324(a). *District of Columbia v. Jones*, 442 A.2d 512, 1982 D.C. App. LEXIS 271 (1982).

Although District of Columbia police officer was permitted to be represented by counsel at time his eligibility for administrative sick leave was determined, he should have been given adequate prior notice of that right so he could have utilized assistance of counsel in preparing for hearing. U.S. Const.Amends. 5, 14; 5 U.S.C.

§ 6324(a). *District of Columbia v. Jones*, 442 A.2d 512, 1982 D.C. App. LEXIS 271 (1982).

Where District of Columbia police officer met informally with representatives of police department at time his eligibility for administrative sick leave was terminated, informal meeting satisfied officer's right to oral hearing, but, under notice requirement of procedural due process, he should have been apprised prior to meeting of manner in which meetings would be conducted. U.S. Const.Amends. 5, 14; 5 U.S.C. § 6324(a). *District of Columbia v. Jones*, 442 A.2d 512, 1982 D.C. App. LEXIS 271 (1982).

In general.

Police officers who were denied administrative sick leave by Metropolitan Police Department were entitled to have their claims considered by Office of Employee Appeals despite their failure to timely appeal denial to OEA, where Department had failed to inform officers of their right to OEA review. D.C. Code 1981, §§ 1-601.1 et seq., 1-603.1(10), 1-606.3, 1-606.4(e), 1-613.3(j). *District of Columbia v. Daniels*, 523 A.2d 569, 1987 D.C. App. LEXIS 325 (1987).

Record was insufficient to allow Court of Appeals to determine whether procedures followed by District of Columbia police department in determining officer's eligibility for administrative sick leave provided sufficient notice to police officer of his rights and whether officer's rights to know evidence against him and to respond to it were protected. U.S. Const.Amends. 5, 14; 5 U.S.C. § 6324(a). *District of Columbia v. Jones*, 442 A.2d 512, 1982 D.C. App. LEXIS 271 (1982).

Property interest.

Police officer who was not placed on administrative sick leave for injuries incurred in off-duty shooting incident did not have a constitutional property interest in such leave. U.S. Const.Amend. 5; 42 U.S.C. § 1983; D.C. Code 1981, § 1-613.3(j). *Hairston v. District of Columbia*, 638 F. Supp. 198, 1986 U.S. Dist. LEXIS 23658 (1986).

Statutory right to administrative sick leave of officer of District of Columbia police department when absence is due to injury or illness resulting from performance of duty is legitimate claim of entitlement, and, therefore, officer's interest in obtaining administrative leave is property right subject to protection afforded by due process clause. U.S. Const.Amends. 5, 14; 5 U.S.C. § 6324(a). *District of Columbia v. Jones*, 442 A.2d 512, 1982 D.C. App. LEXIS 271 (1982).

In determining what process was due to officer of District of Columbia police department in determination of officer's eligibility for administrative sick leave, police officer's substantial property interest must be protected,

but police department must not be unduly burdened with technical procedural requirements. U.S. Const.Amends. 5, 14; 5 U.S.C.

§ 6324(a). District of Columbia v. Jones, 442 A.2d 512, 1982 D.C. App. LEXIS 271 (1982).

§ 1-612.03a. Universal leave program.

(a) The Mayor shall develop a universal leave system for Career and Excepted Service employees who were first employed by the District of Columbia government on or after October 1, 1987, excluding police officers, firefighters, and employees excluded from earning leave pursuant to § 1-612.03(a)(1) through (a)(5). The universal leave system shall include disability income protection for non work-related illness and injury.

(b) Within 90 days of the effective date of this section, the Mayor shall submit the universal leave system to the Council for a 60-day period of review, excluding Saturdays, Sundays, legal holidays and days of Council recess. If the Council does not approve or disapprove the proposed universal leave system by resolution within the 60-day review period, the proposed universal leave system shall be deemed approved.

(c) The submission to the Council shall at a minimum include the following:

- (1) The rate at which universal leave shall be accrued;
- (2) The number of universal leave days that may be carried forward from one leave year to the next;
- (3) A provision for employees who are denied the opportunity to use their universal leave;
- (4) The percentage of income to be received under any disability insurance program and its tax status;
- (5) The definition of "disability" and a method for dispute resolution;
- (6) The stipulated waiting period before disability insurance income would commence;
- (7) The period of disability income protection;
- (8) Transition provisions;
- (9) The effective date of the universal leave system; and
- (10) Fiscal impact.

(Mar. 3, 1979, D.C. Law 2-139, § 1203a, as added June 10, 1998, D.C. Law 12-124, § 101(o)(3), 45 DCR 2464.)

Prior Codifications. — 1981 Ed., § 1-613.3a.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Construction of Law 12-124. — Section 301 of D.C. Law 12-124 provided that nothing in the act shall be construed as superseding the provisions of the National Capital Revitalization and Self-Government Improvement Act of 1997, approved August 5, 1997 (Public Law 105-33; 111 Stat. 712), except that § 47-

395.04(b)(3) is expressly superseded. Further, nothing in the act shall be construed as superseding the provisions of § 47-391.01 et seq. or of § 164 of the District of Columbia Appropriations Act, 1998, approved November 19, 1997 (Public Law 105-100; 111 Stat. 2160).

Editor's notes. — Applicability of § 101(o)(3) of D.C. Law 12-124: Section 401(c) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(h), (l), (m), (n), (o)(2) through (5), (q), (r), (t), (u), (w), and (y) of the act shall apply as of October 21, 1998.

§ 1-612.03b. Donor leave.

(a) An employee shall be entitled to up to 30 days of leave to serve as an organ donor, and up to 7 days of leave to serve as a bone marrow donor, without loss or reduction in pay, leave, or credit for time of service, in a calendar year.

(b) The provisions of subsection (a) of this section shall only apply if the employee is a volunteer donor, and any compensation received by the employee is limited to costs and expenses associated with organ or bone marrow donations.

(c) The Mayor shall prescribe rules and regulations to implement the provisions of this section.

(Mar. 3, 1979, D.C. Law 2-139, § 1203b, as added June 25, 2002, D.C. Law 14-148, § 2, 49 DCR 4231.)

Legislative history of Law 14-148. — Law 14-148, the “Organ and Bone Marrow Donor Leave Amendment Act of 2002”, was introduced in Council and assigned Bill No. 14-135, which was referred to the Committee on Government Operations. The Bill was adopted on first and

second readings on March 5, 2002, and April 9, 2002, respectively. Signed by the Mayor on April 26, 2002, it was assigned Act No. 14-326 and transmitted to both Houses of Congress for its review. D.C. Law 14-148 became effective on June 25, 2002.

§ 1-612.04. Definitions.

For purposes of §§ 1-612.04 through 1-612.10, the term:

(1) “Agency” shall have the meaning provided in § 1-603.01(1).

(2) “Employee” shall have the meaning provided in § 1-603.01(7), except that it shall mean only an employee who is eligible to accrue annual leave.

(3) “Leave donor” means an employee who donates annual leave to the annual leave bank created in accordance with § 1-612.05.

(4) “Leave recipient” means an employee whose personnel authority has approved the employee’s application to receive annual leave from the annual leave bank.

(5) “Medical emergency” means a medical condition of an employee or a member of an employee’s family that is likely to require the employee’s absence from duty for a prolonged period of time and to result in a substantial loss of income to the employee because of the unavailability of paid leave.

(6) “Personnel authority” shall have the meaning provided in § 1-603.01(14).

(Mar. 3, 1979, D.C. Law 2-139, § 1204, as added Sept. 11, 1990, D.C. Law 8-155, § 2, 37 DCR 4159.)

Section references. — This section is referred to in § 1-612.11.

Prior Codifications. — 1981 Ed., § 1-613.4.

Legislative history of Law 8-155. — Law 8-155 was introduced in Council and assigned Bill No. 8-109, which was referred to the Com-

mittee on Government Operations. The Bill was adopted on first and second readings on May 15, 1990, and May 29, 1990, respectively. Signed by the Mayor on June 18, 1990, it was assigned Act No. 8-217 and transmitted to both Houses of Congress for its review.

§ 1-612.05. Annual leave bank.

(a) There is established within the District of Columbia ("District") government an annual leave bank. An employee may donate annual leave to the bank and withdraw annual leave from the bank in accordance with §§ 1-612.06, 1-612.07, and 1-612.08 and under guidelines promulgated by the Mayor pursuant to § 1-612.11.

(b) The Mayor shall maintain an overall accounting of deposits and withdrawals to and from the annual leave bank.

(c) Each personnel authority shall keep an accounting of the amount and value of employee donations to and withdrawals from the bank. The accounting shall be provided to the Mayor on a quarterly basis.

(d) A personnel authority may enter into an agreement with another personnel authority to establish an annual leave bank program or to join an already existing annual leave bank program. The personnel authorities shall provide a copy of the written agreement to the Mayor and the Director of Personnel within 10 days of the agreement.

(Mar. 3, 1979, D.C. Law 2-139, § 1205, as added Sept. 11, 1990, D.C. Law 8-155, § 2, 37 DCR 4159; June 10, 1998, D.C. Law 12-124, § 101(o)(4), 45 DCR 2464.)

Section references. — This section is referred to in §§ 1-612.04 and 1-612.11.

Prior Codifications. — 1981 Ed., § 1-613.5.

Legislative history of Law 8-155. — For legislative history of D.C. Law 8-155, see Historical and Statutory Notes following § 1-613.04.

Legislative history of Law 12-124. — For

legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Editor's notes. — Applicability of § 101(o)(4) of D.C. Law 12-124: Section 401(c) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(h), (l), (m), (n), (o)(2) through (5), (q), (r), (t), (u), (w), and (y) of the act shall apply as of October 21, 1998.

§ 1-612.06. Donations.

(a) A potential leave donor may submit a voluntary written request to the potential leave donor's personnel authority that a specified number of hours of the employee's accrued annual leave be donated to the annual leave bank. The donation shall be made to the annual leave bank in accordance with procedures established pursuant to § 1-612.11.

(b) A leave donor may not donate more than a total of one-half of the amount of annual leave that the leave donor would be entitled to accrue during the leave year in which the donation is made, except that a leave donor may donate restored leave without limitation; however, the personnel authority or his or her designee may, in special circumstances, waive the limitation of the amount of annual leave that can be donated by an employee once the employee has donated the minimum of 4 hours of leave.

(b-1) A leave donor may designate the employee who is to receive the donated leave if the employee has applied for and been approved as a leave recipient. Any remaining donated annual leave, if not used by the designated leave recipient, becomes the property of the annual leave bank program for use by other leave recipients.

(c) The value of the leave donated by the leave donor shall be in an amount equal to the hourly rate of pay of the leave donor multiplied by the number of hours of annual leave donated.

(Mar. 3, 1979, D.C. Law 2-139, § 1206, as added Sept. 11, 1990, D.C. Law 8-155, § 2, 37 DCR 4159; June 10, 1998, D.C. Law 12-124, § 101(o)(5), 45 DCR 2464.)

Section references. — This section is referred to §§ 1-612.04, 1-612.05, and 1-612.11.

Prior Codifications. — 1981 Ed., § 1-613.6.

Legislative history of Law 8-155. — For legislative history of D.C. Law 8-155, see Historical and Statutory Notes following § 1-613.04.

Legislative history of Law 12-124. — For

legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Editor's notes. — Applicability of § 101(o)(5) of D.C. Law 12-124: Section 401(c) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(h), (l), (m), (n), (o)(2) through (5), (q), (r), (t), (u), (w), and (y) of the act shall apply as of October 21, 1998.

§ 1-612.07. Application for withdrawal.

An application for withdrawal shall proceed as follows:

(1) An employee who has been affected by a medical emergency may make written application to the employee's personnel authority to become a leave recipient;

(2) If the employee is not capable of making application on the employee's own behalf, another employee of the personnel authority may make written application on the employee's behalf; and

(3) The application shall be notarized by the affected employee or the employee acting on the affected employee's behalf.

(Mar. 3, 1979, D.C. Law 2-139, § 1207, as added Sept. 11, 1990, D.C. Law 8-155, § 2, 37 DCR 4159.)

Section references. — This section is referred to in §§ 1-612.04, 1-612.05, and 1-612.11.

Prior Codifications. — 1981 Ed., § 1-613.7.

Legislative history of Law 8-155. — For legislative history of D.C. Law 8-155, see Historical and Statutory Notes following § 1-613.04.

§ 1-612.08. Approval of application for withdrawal.

(a) The potential leave recipient's personnel authority shall review an application to become a leave recipient under procedures established by the Mayor pursuant to § 1-612.11.

(b) Before approving an application to become a leave recipient, the personnel authority shall determine that:

(1) The request to become a leave recipient has been necessitated by a medical emergency;

(2) The absence from duty because of the medical emergency is, or is expected to be, at least 10 workdays;

(3) The potential leave recipient has previously donated a minimum of 4 hours of annual leave to the annual leave bank in the leave year in which the employee submits the application to become a leave recipient; and

(4) The potential leave recipient does not possess accrued paid leave sufficient to cover the expected period of absence from work.

(c) The value of the annual leave received by the leave recipient shall be in an amount equal to the hourly rate of pay of the leave recipient multiplied by the number of hours of annual leave received.

(Mar. 3, 1979, D.C. Law 2-139, § 1208, as added Sept. 11, 1990, D.C. Law 8-155, § 2, 37 DCR 4159.)

Section references. — This section is referred to in §§ 1-612.04, 1-612.05, and 1-612.11.

Prior Codifications. — 1981 Ed., § 1-613.8.

Legislative history of Law 8-155. — For legislative history of D.C. Law 8-155, see Historical and Statutory Notes following § 1-613.04.

§ 1-612.09. Use of donated annual leave.

A leave recipient may use annual leave received from the leave bank in the same manner and for the same purposes as if the leave recipient had accrued the leave, except that any annual leave and, if applicable, any sick leave accrued or accumulated to the leave recipient, or any advanced sick leave or compensatory time shall be used before any leave from the leave bank shall be used.

(Mar. 3, 1979, D.C. Law 2-139, § 1209, as added Sept. 11, 1990, D.C. Law 8-155, § 2, 37 DCR 4159.)

Section references. — This section is referred to in §§ 1-612.04 and 1-612.11.

Prior Codifications. — 1981 Ed., § 1-613.9.

Legislative history of Law 8-155. — For legislative history of D.C. Law 8-155, see Historical and Statutory Notes following § 1-613.04.

§ 1-612.10. Termination of medical emergency.

The medical emergency affecting a leave recipient shall terminate when:

- (1) The leave recipient's employment terminates; or
- (2) The leave recipient is no longer affected by the medical emergency.

(Mar. 3, 1979, D.C. Law 2-139, § 1210, as added Sept. 11, 1990, D.C. Law 8-155, § 2, 37 DCR 4159.)

Section references. — This section is referred to in §§ 1-612.04 and 1-612.11.

Prior Codifications. — 1981 Ed., § 1-613.10.

Legislative history of Law 8-155. — For legislative history of D.C. Law 8-155, see Historical and Statutory Notes following § 1-613.04.

§ 1-612.11. Rules.

The Mayor shall issue proposed rules to implement the provisions of §§ 1-612.04 through 1-612.10. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or

disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(Mar. 3, 1979, D.C. Law 2-139, § 1211, as added Sept. 11, 1990, D.C. Law 8-155, § 2, 37 DCR 4159.)

Section references. — This section is referred to in §§ 1-612.05, 1-612.06, and 1-612.08.

Prior Codifications. — 1981 Ed., § 1-613.11.

Legislative history of Law 8-155. — For legislative history of D.C. Law 8-155, see Historical and Statutory Notes following § 1-613.04.

Subchapter XII-A. Voluntary Leave Transfer Program.

§ 1-612.31. Definitions.

For purposes of this subchapter, the term:

- (1) "Agency" shall have the meaning provided in § 1-603.01(1).
- (2) "Child" means any person:
 - (A) Under 21 years of age;
 - (B) Twenty-one years of age or older and is substantially dependent upon the recipient employee by reason of physical or mental disability; or
 - (C) Under 23 years of age and is a full-time student.
- (3) "Domestic partner" shall have the meaning provided in § 32-701.
- (4) "Employee" shall have the meaning provided in § 1-603.01(7), except that it shall mean an employee who is eligible to accrue annual or universal leave.
- (5) "Head" shall have the meaning provided in § 1-603.01.
- (6) "Immediate relative" means:
 - (A) An individual who is related by blood or marriage to the recipient employee as father, mother, child, husband, or wife;
 - (B) An individual for whom the recipient employee is the legal guardian; or
 - (C) A domestic partner.
- (7) "Independent agency" shall have the meaning provided in § 1-603.01(13).
- (8) "Intimidate, threaten, or coerce" includes promising to confer or conferring any benefit such as appointment, promotion, or compensation, or effecting, or threatening to effect, any reprisal such as deprivation of appointment, promotion, or compensation.
- (9) "Leave contributor" means an employee who contributes annual or universal leave to be transferred to a designated recipient employee.
- (10) "Personal care" means custodial or primary assistance that helps an individual with activities of daily living, including bathing, eating, dressing, and continence. The term "personal care" shall include the recent adoption of a child and the care of a newborn child.
- (11) "Prolonged absence" means an employee's absence from duty for at least 10 consecutive workdays that will result in a substantial loss of income to the employee because of the unavailability of paid leave.

(12) “Recipient employee” means an individual employed by the District government for a minimum of one year without a break in service who is designated to receive annual or universal leave transferred from a leave contributor.

(13) “Serious health condition” means pregnancy or a physical or mental illness, injury, or impairment that involves a hospital, hospice, or residential health care facility or continuing treatment at home by a competent health care provider or other individual.

(Mar. 3, 1979, D.C. Law 2-139, § 1231, as added Feb. 6, 2004, D.C. Law 15-68, § 2, 50 DCR 9819; Apr. 13, 2005, D.C. Law 15-354, § 5(c), 52 DCR 2638; Apr. 7, 2006, D.C. Law 16-91, § 118(b), 52 DCR 10637.)

Effect of amendments. — D.C. Law 15-354, in par. (4), validated a previously made technical correction.

D.C. Law 16-91, in par. (4), validated a previously made technical correction.

Legislative history of Law 15-68. — Law 15-68, the “Voluntary Transfer of Leave Amendment Act of 2003”, was introduced in Council and assigned Bill No. 15-46, which was referred to Committee on Government Operations. The Bill was adopted on first and second

readings on July 8, 2003, and October 7, 2003, respectively. Signed by the Mayor on October 24, 2003, it was assigned Act No. 15-197 and transmitted to both Houses of Congress for its review. D.C. Law 15-68 became effective on February 6, 2004.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 1-523.01.

Legislative history of Law 16-91. — For Law 16-91, see notes following § 1-301.45.

§ 1-612.32. Voluntary leave transfer program.

(a) Each agency or independent agency shall establish a voluntary leave transfer program under which annual or universal leave accrued or accumulated by an employee may be transferred on an hour-for-hour basis within the agency to the annual or universal leave account of any other eligible agency employee.

(b) A voluntary transfer of leave is authorized when a potential recipient employee will suffer a prolonged absence due to the employee’s serious health condition or the employee’s responsibility to provide personal care to an immediate relative.

(c) A recipient employee shall be eligible to receive a maximum of 320 hours of transferred leave during any 12-month period. Any unused transferred leave shall be forfeited or may be transferred to the annual leave bank upon the concurrence of the Office of Personnel.

(d)(1) Notwithstanding any other provision of this section, if the head of an agency determines that any organization or program within the agency or independent agency is being substantially disrupted in carrying out its functions or is incurring additional costs because of its participation in the voluntary leave transfer program, the agency head may exclude from the program any employee or group of employees.

(2) If the head of an agency excludes an employee or group of employees from the program, he or she shall submit a report to the Director of the Office of Personnel specifying how the organization or program would be substantially disrupted in carrying out its functions or would incur additional costs. This information shall be included in the Voluntary Transfer of Leave Program Report required under § 1-612.38.

(Mar. 3, 1979, D.C. Law 2-139, § 1232, as added Feb. 6, 2004, D.C. Law 15-68, § 2, 50 DCR 9819; Apr. 13, 2005, D.C. Law 15-354, § 5(d), 52 DCR 2638.)

Effect of amendments. — D.C. Law 15-354, in par. (2) of subsec. (d), validated a previously made technical correction.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 1-523.01.

Legislative history of Law 15-68. — For Law 15-68, see notes following § 1-612.31.

§ 1-612.33. Application to receive transferred leave.

(a) An employee who expects to experience a prolonged absence may make written application to the agency head or designee to become a recipient employee.

(b) If the employee is not capable of making an application, another employee of the agency may make written application on the employee's behalf.

(c) The application shall include at least the following:

- (1) The anticipated duration of the prolonged absence;
- (2) The name, position title, and grade of the proposed recipient employee;
- (3) The name and organizational location within the agency or independent agency as appropriate of the potential leave contributor; and
- (4) The amount of leave requested.

(d) The agency shall require submission of the following:

(1) An affidavit signed by the recipient employee attesting to the fact that the individual requiring personal care is an immediate relative or that the personal care is due to the recent adoption of a child or care of a newborn child; and

(2) Certification from a physician or other licensed healthcare professional that the recipient employee has experienced a serious health condition or that the recipient employee's immediate relative requires personal care, except that no certification shall be required in cases of pregnancy, the recent adoption of a child, or care of a newborn child.

(Mar. 3, 1979, D.C. Law 2-139, § 1233, as added Feb. 6, 2004, D.C. Law 15-68, § 2, 50 DCR 9819.)

Legislative history of Law 15-68. — For Law 15-68, see notes following § 1-612.31.

§ 1-612.34. Leave contributions.

(a) A potential leave contributor may, by written application to the agency head or designee, request that a specified number of hours be transferred from the annual or universal leave account of the employee to the annual or universal leave account of a potential recipient employee.

(b) A leave contributor shall not contribute more than $\frac{1}{2}$ of the amount of annual or universal leave that the leave contributor would be entitled to accrue during the leave year; provided, that a leave contributor may contribute restored leave without limitation.

(Mar. 3, 1979, D.C. Law 2-139, § 1234, as added Feb. 6, 2004, D.C. Law 15-68, § 2, 50 DCR 9819.)

Legislative history of Law 15-68. — For Law 15-68, see notes following § 1-612.31.

§ 1-612.35. Approval or disapproval of leave transfer.

(a) Before approving an application, the agency head or designee shall determine that the request to become a recipient employee has been necessitated by a prolonged absence due to the employee's serious health condition or the employee's responsibility to provide personal care to an immediate relative.

(b) In approving or disapproving the application, the agency head or designee may consider the leave record of the potential receiving employee, the probability that the recipient employee will separate from service, and any exigency or disruption in service that the agency or independent agency may experience.

(c) The agency head or designee shall approve or disapprove an application of a proposed recipient employee and, to the extent practicable, shall notify the proposed recipient employee or the employee acting on behalf of the proposed recipient employee within 15 calendar days of receipt of the application. Notwithstanding any other law, if the recipient employee is eligible for leave under the Family and Medical Leave provisions of 28 U.S.C. § 2601 et seq., the leave transfer shall be granted.

(Mar. 3, 1979, D.C. Law 2-139, § 1235, as added Feb. 6, 2004, D.C. Law 15-68, § 2, 50 DCR 9819.)

Legislative history of Law 15-68. — For Law 15-68, see notes following § 1-612.31.

§ 1-612.36. Receipt and use of transferred leave.

(a) Each agency or independent agency shall maintain an accounting of the voluntary leave transfer program and the leave records of the recipient employee and the leave contributor.

(b) A recipient employee may use contributed annual or universal leave transferred under this section in the same manner as if the leave had accrued to the recipient employee; provided, that any annual, universal leave, sick leave, or advanced leave shall be exhausted before any transferred leave may be used.

(c) During the period in which transferred leave is being used, no annual, universal, or sick leave shall accrue to the recipient employee.

(d) Use of transferred leave shall terminate when:

(1) The recipient employee is no longer affected by the serious health condition or is not responsible for providing personal care to the immediate family member; or

(2) The recipient employee separates from employment.

(e) Unused transferred leave shall not be subject to any form of lump-sum leave payment upon the recipient employee's separation from employment.

(Mar. 3, 1979, D.C. Law 2-139, § 1236, as added Feb. 6, 2004, D.C. Law 15-68, § 2, 50 DCR 9819.)

Legislative history of Law 15-68. — For Law 15-68, see notes following § 1-612.31.

§ 1-612.37. Prohibition of coercion.

An employee shall not directly or indirectly intimidate, threaten, or coerce any other employee for the purpose of interfering with any right that the employee may exercise to contribute, receive, or use annual or universal leave.

(Mar. 3, 1979, D.C. Law 2-139, § 1237, as added Feb. 6, 2004, D.C. Law 15-68, § 2, 50 DCR 9819.)

Legislative history of Law 15-68. — For Law 15-68, see notes following § 1-612.31.

§ 1-612.38. Voluntary Transfer of Leave Program Report.

On or before February 1 of each year, the Office of Personnel shall provide a Voluntary Transfer of Leave Program Report to the Council. The report shall include:

- (1) A comprehensive list of all voluntary leave bank contributors;
- (2) A comprehensive list of all transfer of leave recipients;
- (3) Documentation demonstrating that proper deductions have been taken from the contributor's leave accrual;
- (4) Documentation demonstrating the actual transfer of leave to the recipient; and
- (5) If the head of an agency excludes an employee or group of employees from the program under § 1-612.32(d) because an organization or program within the agency would be substantially disrupted in carrying out its functions or would incur additional costs:

(A) The manner in which the organization or program within the agency would be substantially disrupted in carrying out its functions; or

(B) The amount of additional costs which will be incurred and the reasons that they will be incurred.

(Mar. 3, 1979, D.C. Law 2-139, § 1238, as added Feb. 6, 2004, D.C. Law 15-68, § 2, 50 DCR 9819.)

Cross references. — Mayor and Council members, coverage, see § 1-602.02.

Merit system, continuation of existing laws, see § 1-632.06.

Merit system, effective date provisions, see § 1-636.02.

Merit system, life insurance, withholdings from employees and annuitants, see § 1-622.10.

Public assistance, workers' compensation, recipients of Temporary Assistance for Needy Families, see § 4-205.19k.

Workers' compensation, "employee" defined, see § 32-1501.

Legislative history of Law 15-68. — For Law 15-68, see notes following § 1-612.31.

*Subchapter XIII. Employee Development.***§ 1-613.01. Programs for employee development.**

(a) The Mayor and the District of Columbia Board of Education shall each install and maintain programs for the training and development of their respective employees through planned courses, systems, or other instruction or education in fields which are or will be related to the performance of official duties for the District, in order to increase their knowledge, proficiency, ability, skill and qualifications in the performance of these duties. This system of training shall be created to ensure that the principles of efficiency, economy and equitable treatment for all employees is carried out for the successful operation of the District government.

(b) When educational facilities under the control and direction of the District government are not the most economical available to carry out the provisions of this section, the Mayor and the District of Columbia Board of Education may make arrangements and agreements with colleges, universities, educational institutions, appropriate institutions or corporations. The appropriate personnel authority shall have the authority to enter into these arrangements and agreements for employee development. The Mayor and the District of Columbia Board of Education shall issue rules and regulations concerning what items must be included in agreements for employee development activities relying on non-District facilities.

(c)(1) An employee shall not suffer a loss in pay, tenure, or other rights and benefits by reason of participation in any training or career development program when such participation has been approved or authorized by the District government.

(2) The District may: (A) Pay all or a part of the pay of an employee selected and assigned for training under this section (except overtime, holiday, night, or Sunday premium pay); and (B) pay all or a part of the necessary expenses of the training, including the employee's costs of travel, subsistence, transportation, tuition, fees, books, and related materials; and membership fees to the extent that the fee is a necessary cost directly related to the training itself or that payment of the fee is a condition precedent for the training. The prohibition in this subsection on payment of premium pay may be waived when the Mayor determines that payment of premium pay would be in the interests of equity and good conscience or in the public interest.

(d)(1) An employee selected for training under this section in a university, college, or other educational institution not controlled by the District shall agree in writing with the District that he or she will:

(A) Continue in the service of the District after the end of the training period for a period of time at least equal to the length of the training period, unless he or she is involuntarily separated from that service; and

(B) Pay to the District the amount of expenses incurred by it in connection with the training, other than his or her pay, if he or she voluntarily leaves that service before the end of the period for which he or she had agreed to serve.

(2) If an employee fails to fulfill the agreement under this subsection to pay the expenses of the training, a sum equal to those expenses is recoverable by the District from the employee, or his or her estate, by setoff against pay, amount of retirement credit, or other amount due the employee from the District.

(3) The right of recovery under paragraph (2) of this subsection may be waived, in whole or in part, by the Mayor and the District of Columbia Board of Education if recovery would be against equity and good conscience, or against the public interest.

(4) The Mayor and the District of Columbia Board of Education may exempt from the requirement for entering into a written agreement under this subsection the following:

(A) An employee selected for training that does not exceed 80 hours within a single program;

(B) An employee selected for training which is given through a correspondence course; and

(C) An employee selected for training in a manufacturer's training facility, if that training is the direct result of the lease or purchase of that manufacturer's product by the District government.

(e) The Mayor and the District of Columbia Board of Education shall issue rules and regulations concerning the implementation of this subchapter, consistent with equal employment opportunities and standards.

(f) The head of each District agency shall prepare an annual employee development plan which identifies subject matter areas where training is needed, the types of programs and courses which could be used to meet those identified training needs and the types of training activities which will be carried out in the coming year.

(1) The annual employee development plan should also evaluate the impact and success of prior training and employee development activities. Cost figures should include employee pay and benefit expenses while engaged in training on official time, tuition expenses and other fees, travel costs, and other appropriate items.

(2) The Council may review and inspect all plans developed in accordance with this subsection.

(g) Programs developed under the authority of this subchapter are appropriate matters for collective bargaining with labor organizations.

(Mar. 3, 1979, D.C. Law 2-139, § 1301, 25 DCR 5740.)

Prior Codifications. — 1981 Ed., § 1-614.1.

1973 Ed., § 1-343.1.

Emergency legislation. — For temporary amendment of § 401 of the Omnibus Personnel Reform Amendment Act of 1998 (D.C. Law 12-124), see § 2 of the Personnel Reform Tech-

nical Amendment Emergency Act of 1998 (D.C. Act 12-520, December 4, 1998, 45 DCR 9049).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

*Subchapter XIII-A. Performance Management.***§ 1-613.51. Performance management system established.**

There is established a comprehensive performance management system designed to:

- (1) Inform employees of work expectations;
- (2) Hold employees accountable for their performance, which shall include a direct relationship between the rating received pursuant to § 1-613.52 and the receipt of any periodic step increase or of any performance based increase that may be established under the compensation system authorized by subchapter XI;
- (3) Objectively evaluate employees' work performance based on criteria that have been made known to the employees;
- (4) Improve employee performance through training;
- (5) Recognize employee accomplishment; and
- (6) Include customer satisfaction as an evaluation factor.

(Mar. 3, 1979, D.C. Law 2-139, § 1351, as added June 10, 1998, D.C. Law 12-124, § 101(p), 45 DCR 2464; Apr. 12, 2000, D.C. Law 13-91, § 103(q), 47 DCR 520; June 24, 2000, D.C. Law 13-131, § 2(a), 47 DCR 2692.)

Prior Codifications. — 1981 Ed., § 1-614.51.

Effect of amendments. — D.C. Law 13-131 rewrote subd. (2), which previously read:

"Hold employees accountable for their performance, which shall include the requirement that an employee receive a rating of either 'achieved expectations' or 'exceeded expectations' pursuant to § 1-614.52 for the rating period immediately prior to the due date for a periodic step increase to be able to receive that step increase, and that each failure to achieve the required rating shall result in the due date for the step increase being delayed for an additional year;"

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(a) of Performance Rating Levels Temporary Amendment Act of 1999 (D.C. Law 13-85, April 12, 2000, law notification 47 DCR 2642).

Emergency legislation. — For temporary (90-day) amendment of section, see § 2(a) of the Performance Rating Levels Emergency Amendment Act of 1999 (D.C. Act 13-206, December 8, 1999, 46 DCR 10468).

For temporary (90-day) amendment of section, see § 2(a) of the Performance Rating Levels Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-275, March 7, 2000, 47 DCR 2013).

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Legislative history of Law 13-131. — Law 13-131, the "Performance Rating Levels Amendment Act of 2000," was introduced in Council and assigned Bill No. 13-438, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on February 1, 2000, and March 7, 2000, respectively. Signed by the Mayor on March 22, 2000, it was assigned Act No. 13-301 and transmitted to both Houses of Congress for its review. D.C. Law 13-131 became effective on June 24, 2000.

Construction of Law 12-124. — Section 301 of D.C. Law 12-124 provided that nothing in the act shall be construed as superseding the provisions of the National Capital Revitalization and Self-Government Improvement Act of 1997, approved August 5, 1997 (Public Law 105-33; 111 Stat. 712), except that § 47-395.04(b)(3) is expressly superseded. Further, nothing in the act shall be construed as superseding the provisions of § 47-391.01 et seq. or of § 164 of the District of Columbia Appropriations Act, 1998, approved November 19, 1997 (Public Law 105-100; 111 Stat. 2160).

Delegation of Authority. — Delegation of Personnel Authority and Hiring of Employees Pursuant to the National Capital Revitalization Corporation and Anacostia Waterfront Corporation Reorganization Clarification Emergency Act of 2007, effective July 20, 2007 (D.C. Act 17-71), see Mayor's Order 2007-182, August 8, 2007 (54 DCR 11616).

Delegation of Personnel Authority and Hiring of Employees Pursuant to the National

Capital Revitalization Corporation and Anacostia Waterfront Corporation Reorganization Clarification Emergency Act of 2007, D.C. Act 17-71, effective July 20, 2007, see Mayor's Order 2007-195, August 24, 2007 (54 DCR 11633).

Editor's notes. — Applicability of § 101(p) of D.C. Law 12-124: Section 401(a) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(d), (k), (p), (s), and (x) of this act shall apply upon the enactment of legislation by the United States Congress that

states the following: "Notwithstanding any other law, section 101(d), (k), (p), (s), and (x) of the Omnibus Personnel Reform Act of 1998, adopted by the Council of the District of Columbia is enacted into law."

Section 134 of Title I of Division C of Pub. L. 105-277, 112 Stat. 2681-596, provided that "Notwithstanding any other law, sections 101(d), (k), (p), (s), and (x) of the Omnibus Personnel Reform Amendment Act of 1998, D.C. Law 12-124, effective June 11, 1998, are enacted into law."

§ 1-613.52. Performance management system.

The performance management system shall provide for:

- (1) The development of individual performance plans for all employees;
- (2) Ratings based on one or more of the following performance management components:
 - (A) Standards;
 - (B) Objectives;
 - (C) Real-time tasks and assignments; and
 - (D) Competencies;
- (3) Up to 5 rating levels, the highest of which shall constitute an outstanding performance rating for purposes of § 1-624.02(b)(3) and the lowest of which shall constitute an unacceptable performance rating for purposes of § 1-624.02(b)(4);
- (4) A rating process, with (at a minimum) annual evaluations which may include input from citizens, customers, peers, the employee, subordinates, and supervisors;
- (5) A removal and reconsideration process, which may include the alternatives of reassignment and demotion; and
- (6) An opportunity to demonstrate an improvement in performance during the reconsideration process.

(Mar. 3, 1979, D.C. Law 2-139, § 1352, as added June 10, 1998, D.C. Law 12-124, § 101(p), 45 DCR 2464; June 24, 2000, D.C. Law 13-131, § 2(b), 47 DCR 2692.)

Prior Codifications. — 1981 Ed., § 1-614.52.

Effect of amendments. — D.C. Law 13-131 rewrote subd. (3), which previously read:

"Rating levels of:

- "(A) Exceeds expectations (outstanding);
- "(B) Achieved expectations;
- "(C) Below expectations; and
- "(D) Failed expectations (unacceptable)."

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(b) of Performance Rating Levels Temporary Amendment Act of 1999 (D.C. Law 13-85, April 12, 2000, law notification 47 DCR 2642).

Emergency legislation. — For temporary

(90-day) amendment of section, see § 2(b) of the Performance Rating Levels Emergency Amendment Act of 1999 (D.C. Act 13-206, December 8, 1999, 46 DCR 10468).

For temporary (90-day) amendment of section, see § 2(b) of the Performance Rating Levels Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-275, March 7, 2000, 47 DCR 2013).

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Legislative history of Law 13-131. — For Law 13-131, see notes following § 1-613.51.

Editor's notes. — Applicability of § 101(p)

of D.C. Law 12-124: See Historical and Statutory Notes following § 1-613.51.

§ 1-613.53. Transition provisions.

(a) Until regulations are issued by the Mayor, the Board of Education and the Board of Trustees of the University of the District of Columbia to implement the provisions of this subchapter for their respective employees, the performance evaluation systems in effect on June 10, 1998, shall continue in effect.

(b) Notwithstanding any other provision of law or of any collective bargaining agreement, the implementation of the performance management system established in this subchapter is a non-negotiable subject for collective bargaining.

(Mar. 3, 1979, D.C. Law 2-139, § 1353, as added June 10, 1998, D.C. Law 12-124, § 101(p), 45 DCR 2464.)

Prior Codifications. — 1981 Ed., § 1-614.53.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Editor's notes. — Applicability of § 101(p) of D.C. Law 12-124: See Historical and Statutory Notes following § 1-613.51.

Subchapter XIV. Performance-Rating Plans.

§ 1-614.01. Established. [Repealed].

Repealed.

(Mar. 3, 1979, D.C. Law 2-139, § 1401, 25 DCR 5740; Sept. 18, 1981, D.C. Law 4-30, § 2, 28 DCR 3118; Feb. 24, 1987, D.C. Law 6-177, § 3(s), 33 DCR 7241; Aug. 1, 1996, D.C. Law 11-152, § 302(r), 43 DCR 2978; Mar. 24, 1998, D.C. Law 12-81, § 2(b), 45 DCR 745; June 10, 1998, D.C. Law 12-124, § 101(q), 45 DCR 2464.)

Prior Codifications. — 1981 Ed., § 1-615.1.

1973 Ed., § 1-344.1.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Editor's notes. — Applicability of § 101(q) of D.C. Law 12-124: Section 401(c) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(h), (l), (m), (n), (o)(2) through (5), (q), (r), (t), (u), (w), and (y) of the act shall apply as of October 21, 1998.

§ 1-614.02. Content requirements. [Repealed].

Repealed.

(Mar. 3, 1979, D.C. Law 2-139, § 1402, 25 DCR 5740; June 10, 1998, D.C. Law 12-124, § 101(q), 45 DCR 2464.)

Prior Codifications. — 1981 Ed., § 1-615.2.

1973 Ed., § 1-344.2.

Legislative history of Law 12-124. — For

legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Editor's notes. — Applicability of § 101(q) of D.C. Law 12-124: See Historical and Statutory Notes following § 1-614.01.

§ 1-614.03. Ratings. [Repealed].

Repealed.

(Mar. 3, 1979, D.C. Law 2-139, § 1403, 25 DCR 5740; June 10, 1998, D.C. Law 12-154, § 101(q), 45 DCR 2464.)

Prior Codifications. — 1981 Ed., § 1-615.3.

1973 Ed., § 1-344.3.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see His-

torical and Statutory Notes following § 1-603.01.

Editor's notes. — Applicability of § 101(q) of D.C. Law 12-124: See Historical and Statutory Notes following § 1-614.01.

§ 1-614.04. Review of ratings. [Repealed].

Repealed.

(Mar. 3, 1979, D.C. Law 2-139, § 1404, 25 DCR 5740; Mar. 5, 1981, D.C. Law 3-158, § 10(i), 27 DCR 5127; Sept. 26, 1995, D.C. Law 11-52, § 803(a), 42 DCR 3684; June 10, 1998, D.C. Law 12-124, § 101(q), 45 DCR 2464.)

Prior Codifications. — 1981 Ed., § 1-615.4.

1973 Ed., § 1-344.4.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see His-

torical and Statutory Notes following § 1-603.01.

Editor's notes. — Applicability of § 101(q) of D.C. Law 12-124: See Historical and Statutory Notes following § 1-614.01.

§ 1-614.05. Other rating procedures prohibited; exception. [Repealed].

Repealed.

(Mar. 3, 1979, D.C. Law 2-139, § 1405, 25 DCR 5740; May 16, 1995, D.C. Law 11-16, § 2(a), 42 DCR 1394; June 10, 1998, D.C. Law 12-124, § 101(q), 45 DCR 2464.)

Prior Codifications. — 1981 Ed., § 1-615.5.

1973 Ed., § 1-344.5.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see His-

torical and Statutory Notes following § 1-603.01.

Editor's notes. — Applicability of § 101(q) of D.C. Law 12-124: See Historical and Statutory Notes following § 1-614.01.

Subchapter XIV-A. Managers Accountability.

§ 1-614.11. Definitions.

For the purposes of this subchapter, the term:

(1) "Agency" means any office, department, division, board, commission, or other agency of the District government, including both subordinate agency and independent agency, required by law or by the Mayor or Council to administer any law or any rule adopted under the authority of a law. The term

“agency” does not include the Superior Court of the District of Columbia or the District of Columbia Court of Appeals.

(2) “Performance measures” means the methods of gauging the outcomes and outputs of publicly funded activities through procedures and devices, including, but not limited to, existing agency records, citizen surveys, and trained observer ratings.

(3) “Performance plan” means the strategic description of how an agency’s mission and goals will be accomplished and shall consist of functions, activities, operations, and projects and both qualitative and quantitative measures required for effective implementation. The performance plan shall also include the following:

(A) Mission statement: A statement of central purpose of the organizational entity;

(B) Objectives: Broad statements of the desired benefits from the performance of the central purpose; and

(C) Goals: Target levels of performance expressed as a tangible, measurable objective, against which actual achievement can be compared, including a goal expressed as a quantitative standard, value, or rate.

(4) “Performance report” means the annual device by which District agencies report to the Council on the progress of management employees and other personnel toward achieving the objectives and goals in the performance plan.

(5) “Management employee” means any person whose functions include responsibility for project management and supervision of staff and the achievement of the project’s overall goals and objectives.

(6) “Nonmanagement personnel” means any person whose functions do not include responsibility for project management or supervision of staff, and are subject to the control and supervision by management employees.

(7) “Significant activities” means activities that are central to the functions, goals, and services of the agency, program, or project.

(8) “Publicly funded” or “public funds” means support by any governmental source.

(Mar. 3, 1979, D.C. Law 2-139, § 1411, as added May 16, 1995, D.C. Law 11-16, § 2(b), 42 DCR 1394; Apr. 12, 2000, D.C. Law 13-91, § 106, 47 DCR 520.)

Section references. — This section is referred to in §§ 1-609.52 and 1-609.58.

Prior Codifications. — 1981 Ed., § 1-615.11.

Effect of amendments. — D.C. Law 13-91, in subd. (3)(C), substituted “measurable” for “measureable”.

Legislative history of Law 11-16. — Law 11-16, the “Government Managers Accountability Amendment Act of 1995,” was introduced in Council and assigned Bill No. 11-18, which was

retained by council. The Bill was adopted on first and second readings on January 17, 1995, and February 7, 1995, respectively. Approved without the signature of the Mayor on March 10, 1995, it was assigned Act No. 11-28 and transmitted to both Houses of Congress for its review. D.C. Law 11-16 became effective on May 16, 1995.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-602.3.

§ 1-614.12. Performance plan.

(a) Not later than January 1, 1996, and coincident with annual budget

submissions to the Council in succeeding years, each agency of the District of Columbia shall develop and submit to the Council a performance plan that covers all publicly funded activities of the agency.

(b) The performance plan shall state measurable, objective performance goals and objectives for all significant activities of the government of the District of Columbia, including activities supported in whole or in part by public funds, but performed in whole or in part by some other public or private entity.

(c) Control center and responsibility center budgetary information shall be organized along specific program lines with corresponding statements of goals and objectives included in the performance plan.

(d) For each agency and major program covered by the performance plan, there shall be one or more measures of performance, that addresses both quantity and quality. The performance measures may include program outputs and activity levels, but should also include measures of program outcomes and results.

(e) The performance plan shall state the name and position of the management employees most directly responsible for the achievement of each performance measure, and the immediate supervisor or superior of the management employees.

(f) Any change in resources or reprogramming within the agency shall require appropriate revision to the performance plan by the agency.

(Mar. 3, 1979, D.C. Law 2-139, § 1412, as added May 16, 1995, D.C. Law 11-16, § 2(b), 42 DCR 1394; Oct. 19, 2000, D.C. Law 13-172, § 1802, 47 DCR 6308; Oct. 19, 2000, D.C. Law 13-172, § 1802(a), 47 DCR 6308.)

Prior Codifications. — 1981 Ed., § 1-615.12.

Effect of amendments. — D.C. Law 13-172 rewrote subsec. (e), which previously read:

"For each measure of performance there shall be at least 2 stated objectives, one designated as an acceptable level of performance and the other designated as a superior level of performance. The performance plan shall also state the position, and immediate supervisor or superior of the District of Columbia management employee, and the identity of nonmanagement personnel who are most directly responsible for the achievement of each performance measure."

Emergency legislation. — For temporary (90-day) amendment of section, see § 1802(a) of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see § 1802(a) of the Fiscal Year 2001

Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 11-16. — For legislative history of D.C. Law 11-16, see Historical and Statutory Notes following § 1-614.11.

Legislative history of Law 13-172. — Law 13-172, the "Fiscal Year 2001 Budget Support Act of 2000," was introduced in Council and assigned Bill No. 13-679, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 18, 2000, and June 6, 2000, respectively. Signed by the Mayor on June 26, 2000, it was assigned Act No. 13-375 and transmitted to both Houses of Congress for its review. D.C. Law 13-172 became effective on October 19, 2000.

Mayor's Orders. — Government Managers Accountability Act of 1995—FY 96 Performance Report and FY 98 Performance Plan: See Mayor's Order 97-8, January 14, 1997 (44 DCR 490).

§ 1-614.13. Performance report.

(a) Not later than January 1, 1997, and on January 15th in subsequent

years, each agency of the District of Columbia government shall develop and submit to the Council of the District of Columbia a performance report covering all major programs of the agency.

(b) The performance report shall indicate, for each performance measure stated in the previous fiscal year's performance plan, the actual level of performance as compared to the stated goal or objective for performance. The performance report shall also state the name and position of the management employee or employees most directly responsible for the achievement of each performance measure, and the immediate supervisor or superior of the management employee or employees.

(Mar. 3, 1979, D.C. Law 2-139, § 1413, as added May 16, 1995, D.C. Law 11-16, § 2(b), 42 DCR 1394; Oct. 19, 2000, D.C. Law 13-172, § 1802(b), 47 DCR 6308.)

Prior Codifications. — 1981 Ed., § 1-615.13.

Effect of amendments. — D.C. Law 13-172, in subsec. (a), substituted "on January 15th in subsequent years" for "coincident with annual agency budget submissions in subsequent years"; and rewrote subsec. (b), which previously read:

"The performance report shall, for each performance measure stated in the previous fiscal year's performance plan, indicate the actual level of performance achieved as compared to the stated goal or objective for an acceptable level of performance and the goal or objective for a superior level of performance. The performance report shall also state the position and the immediate supervisor or superior of the District of Columbia management employee most directly responsible for the achievement of each performance measure, as well as the

names of the nonmanagement personnel responsible for the accomplishment of the performance measure under management's supervision."

Emergency legislation. — For temporary (90-day) amendment of section, see § 1802(b) of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see § 1802(b) of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 11-16. — For legislative history of D.C. Law 11-16, see Historical and Statutory Notes following § 1-614.11.

Legislative history of Law 13-172. — For Law 13-172, see notes following § 1-614.12.

§ 1-614.14. Development of plans and reports.

(a) Agencies of the District of Columbia shall develop the performance plans and performance reports that are submitted by January 1, 1996, January 1, 1997, and succeeding years in consultation with the Office of the District of Columbia Auditor.

(b) The Mayor shall order that the District of Columbia Office of Personnel amend its management and personnel laws and regulations to be in conformance with the provisions of this subchapter.

(c) The Office of the District of Columbia Auditor shall conduct an audit of selected performance measures presented in performance reports of certain agencies each fiscal year.

(d) The District may invite outside review of the process and the indicators upon the submission of the first performance plan and performance report to obtain recommendations concerning the process and the indicators, and after the initial review, on a biannual basis.

(Mar. 3, 1979, D.C. Law 2-139, § 1414, as added May 16, 1995, D.C. Law 11-16, § 2(b), 42 DCR 1394; Oct. 19, 2000, D.C. Law 13-172, § 2402(b), 47 DCR 6308.)

Cross references. — Mayor and Council members, coverage, see § 1-602.02.

Organization for personnel management, rules and regulations, see § 1-604.04.

Prior Codifications. — 1981 Ed., § 1-615.14.

Effect of amendments. — D.C. Law 13-172 rewrote subsec. (c), which previously read:

“The Office of the District of Columbia Auditor shall conduct an audit of the performance reports of the District of Columbia that are submitted in 1997 and 1998.”

Emergency legislation. — For temporary (90-day) amendment of section, see § 2402(b) of

the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see § 2402(b) of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 11-16. — For legislative history of D.C. Law 11-16, see Historical and Statutory Notes following § 1-614.11.

Legislative history of Law 13-172. — For Law 13-172, see notes following § 1-614.11.

Subchapter XV. Employee Rights and Responsibilities.

§ 1-615.01. Declaration of purpose. [Repealed].

Repealed.

(Mar. 3, 1979, D.C. Law 2-139, § 1501, 25 DCR 5740; Oct. 7, 1998, D.C. Law 12-160, § 102(b), 45 DCR 5147.)

Prior Codifications. — 1981 Ed., § 1-616.1.

1973 Ed., § 1-345.1.

Emergency legislation. — For temporary repeal of §§ 1-615.01 through 1-615.03, see § 102(b) of the Whistleblower Reinforcement Emergency Amendment Act of 1998 (D.C. Act 12-400, July 13, 1998, 45 DCR 5158) and

§ 102(b) of the Whistleblower Reinforcement Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-464, October 28, 1998, 45 DCR 7821).

Legislative history of Law 12-160. — For legislative history of D.C. Law 12-160, see Historical and Statutory Notes following § 1-602.01.

§ 1-615.02. Employee bill of rights. [Repealed].

Repealed.

(Mar. 3, 1979, D.C. Law 2-139, § 1502, 25 DCR 5740; Oct. 7, 1998, D.C. Law 12-160, § 102(b), 45 DCR 5147.)

Prior Codifications. — 1981 Ed., § 1-616.2.

1973 Ed., § 1-345.2.

Emergency legislation. — See Historical and Statutory Notes following § 1-615.01.

Legislative history of Law 12-160. — For legislative history of D.C. Law 12-160, see Historical and Statutory Notes following § 1-602.01.

§ 1-615.03. Complaints of criminal harassment for appearances and testimony before the Council. [Repealed].

Repealed.

(Mar. 3, 1979, D.C. Law 2-139, § 1503, 25 DCR 5740; Sept. 26, 1990, D.C. Law 8-169, § 2(a), 37 DCR 4835; Oct. 7, 1998, D.C. Law 12-160, § 102(b), 45 DCR 5147.)

Prior Codifications. — 1981 Ed., § 1-616.3.

1973 Ed., § 1-345.3.

Emergency legislation. — See Historical and Statutory Notes following § 1-615.01.

Legislative history of Law 12-160. — For legislative history of D.C. Law 12-160, see Historical and Statutory Notes following § 1-602.01.

§ 1-615.04. Public employees as fiduciaries for consumer protection.

(a) For purposes of this section, “consumer protection law” shall include any law intended to protect, or which does in fact protect, individual consumers from unfair, deceptive, or misleading acts or practices; or the nondisclosure of product quality, weight, size, or performance. Any employee who administers, enforces, or implements any health, safety, environmental, or consumer protection law, or any rules and regulations promulgated for the enforcement of such laws, is a fiduciary to any individual or class of individuals intended to be protected, or who are in fact protected, from injury or harm, or risk of injury or harm, by laws, rules and regulations, and, as a fiduciary, is obligated to protect such individual or class of individuals.

(b) Any individual or class of individuals may commence a civil action on his or her or their own behalf against any employee or employees in any agency for breach of a fiduciary duty upon showing that said employee or employees by his or her or their acts or omissions has or have exposed said individual or class of individuals to an injury or harm, or risk of injury or harm, from which they are to be protected by the employee or employees. Such action may be brought in the Superior Court of the District of Columbia. The District of Columbia, through the Corporation Counsel, shall defend any employee or employees against whom such action is commenced. Such employee or employees may, however, at his or her or their option, provide for his or her or their own defense.

(c) If the Court finds that any employee or employees have breached their fiduciary duty by any act or omission or by any series of acts or omissions, the Court shall do the following:

(1) Order performance or cessation of performance, as appropriate; and

(2) Take any other appropriate action, including the assessment of fines not to exceed \$1,000, against any employee or employees within the agency who has or have breached the duties of the fiduciary relationship.

(Mar. 3, 1979, D.C. Law 2-139, § 1504, 25 DCR 5740.)

Prior Codifications. — 1981 Ed., § 1-616.4.

1973 Ed., § 1-345.4.

Legislative history of Law 2-139. — For

legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

§ 1-615.05. Curbing fraud and conflicts of interest.

(a)(1) Any citizen shall have a right to commence a suit in the Superior Court of the District of Columbia on behalf of the District government to recover funds which have been improperly paid by the District government

while there exists any conflict of interest on the part of the employee or employees directly or indirectly responsible for such payment.

(2) It shall be an affirmative defense to any action under this section that the defendant did not know or have reason to know of the conflict of interest.

(b) Any citizen who commences a suit under this section shall be entitled to 10 percent of the amount recovered for the District. The prevailing party shall recover reasonable attorney's fees and other costs incidental to the action.

(c) The right of a citizen to commence and maintain a suit under this section shall continue notwithstanding any action taken by the Corporation Counsel or any United States attorney: Provided, however, that if the District shall first commence suit, a citizen may not commence a suit under this section: Provided, further, however, that if the District shall fail to carry on such suit with due diligence within a period of 6 months or within such additional time as the Court may allow, a citizen may commence a suit under this section and such suit shall continue notwithstanding any action taken by the Corporation Counsel or any United States attorney.

(Mar. 3, 1979, D.C. Law 2-139, § 1505, 25 DCR 5740.)

Prior Codifications. — 1981 Ed., § 1-616.5. legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

1973 Ed., § 1-345.5.

Legislative history of Law 2-139. — For

Subchapter XV-A. Whistleblower Protection.

§ 1-615.51. Findings and declaration of purpose.

The Council finds and declares that the public interest is served when employees of the District government are free to report waste, fraud, abuse of authority, violations of law, or threats to public health or safety without fear of retaliation or reprisal. Accordingly, the Council declares as its policy to:

(1) Enhance the rights of District employees to challenge the actions or failures of their agencies and to express their views without fear of retaliation through appropriate channels within the agency, complete and frank responses to Council inquiries, free access to law enforcement officials, oversight agencies of both the executive and legislative branches of government, and appropriate communication with the public;

(2) Ensure that acts of the Council enacted to protect individual citizens are properly enforced;

(3) Provide new rights and remedies to guarantee and ensure that public offices are truly public trusts;

(4) Hold public employees personally accountable for failure to enforce the laws and for negligence in the performance of their public duties;

(5) Ensure that rights of employees to expose corruption, dishonesty, incompetence, or administrative failure are protected;

(6) Guarantee the rights of employees to contact and communicate with the Council and be protected in that exercise;

(7) Protect employees from reprisal or retaliation for the performance of their duties; and

(8) Motivate employees to do their duties justly and efficiently.

(Mar. 3, 1979, D.C. Law 2-139, § 1551, as added Oct. 7, 1998, D.C. Law 12-160, § 102(c), 45 DCR 5147.)

Prior Codifications. — 1981 Ed., § 1-616.11.

Emergency legislation. — For temporary addition of subchapter, see § 102(c) of the Whistleblower Reinforcement Emergency Amendment Act of 1998 (D.C. Act 12-400, July 13, 1998, 45 DCR 5158) and § 102(c) of the

Whistleblower Reinforcement Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-464, October 28, 1998, 45 DCR 7821).

Editor's notes. — For whistleblower protection for employees of contracts and instrumentalities, see § 2-223.01 et seq.

CASE NOTES

ANALYSIS

Construction with other laws.

Immunity.

In general.

Statute of limitations.

Sufficiency of evidence.

Construction with other laws.

Disciplinary action taken against Metropolitan Police Department (MPD) detective was not causally related to his claimed protected disclosures, complaints he made to his supervisor and to chairman of labor union about MPD's staffing initiative, as required to establish prima facie claim for violation of the District of Columbia Whistleblower Protection Act, where detective asserted that the disciplinary action was an improper retaliation for unauthorized media interview he gave about staffing initiative. *Hawkins v. Boone*, 786 F.Supp.2d 328, 2011 U.S. Dist. LEXIS 54449 (2011).

Exception to at-will employment doctrine was not necessary to vindicate an important public policy, as required in order for terminated supervisor who was an at-will employee to maintain a wrongful termination in violation of public policy action against District of Columbia Department of Human Services (DHS), when supervisor alleged she was terminated for reporting violations of municipal personnel regulations governing hiring and promotion, as terminated supervisor's conduct in reporting the alleged violations fell under the aegis of the Whistleblower Protection Act, and the Act allowed an employee aggrieved by a personnel action prohibited by the Act to bring a civil action for monetary and equitable relief. *Carter v. District of Columbia*, 980 A.2d 1217, 2009 D.C. App. LEXIS 472 (2009).

Immunity.

Elimination of pre-suit notice provision through District of Columbia Whistleblower Protection Amendment Act was procedural

change that had to be applied to pending actions and claims under Whistleblower Protection Act (WPA), since amendment did not enlarge scope of cause of action, alter District's responsibilities, or increase District's liability; although waivers of sovereign immunity had to be clearly expressed, District waived such immunity when it first enacted WPA. *Bowyer v. District of Columbia*, 779 F.Supp.2d 159, 2011 U.S. Dist. LEXIS 46105 (2011).

Former employee of District of Columbia Office of Unified Communications (OUC) could not sue her former supervisor individually for alleged violations of District of Columbia Whistleblower Protection Act (WPA). *Jones v. Quintana*, 658 F.Supp.2d 183, 2009 U.S. Dist. LEXIS 90238 (2009).

In general.

Interview that Metropolitan Police Department (MPD) detective gave to media expressing concerns about MPD's staffing initiative policy did not qualify as "protected disclosure" under the District of Columbia Whistleblower Protection Act, as detective merely gave his opinion on a policy debate, already known to the public and the press, and was not reporting new information on government waste, fraud, abuse of authority, or threats to public health or safety. *Hawkins v. Boone*, 786 F.Supp.2d 328, 2011 U.S. Dist. LEXIS 54449 (2011).

There is no implied right of action against supervisors under District of Columbia's Whistleblower Protection Act. *Tabb v. District of Columbia*, 477 F.Supp.2d 185, 2007 U.S. Dist. LEXIS 18126 (2007).

The Whistleblower Protection Act is not a weapon in arguments over policy or a shield for insubordinate conduct. *Zirkle v. District of Columbia*, 830 A.2d 1250, 2003 D.C. App. LEXIS 540 (2003).

Statute of limitations.

Reinstatement of previously barred claims under District of Columbia Whistleblower Pro-

tection Act (WPA), after elimination of pre-suit notice provision, was necessary to accomplish justice, on motion to amend prior ruling on basis of "other reason that justifies relief," particularly given that plaintiffs' remaining WPA claims were still pending, parties had yet to conclude discovery, and District of Columbia Council had indicated that elimination of pre-suit notice requirement for WPA claims was intended to facilitate such claims. *Bowyer v. District of Columbia*, 779 F.Supp.2d 159, 2011 U.S. Dist. LEXIS 46105 (2011).

Motion to amend prior ruling barring District of Columbia Whistleblower Protection Act (WPA) claims on basis of "other reason that justifies relief," over 13 months after amendment to eliminate pre-suit notice provision became effective, had been brought within reasonable time, since parties were still in discovery and defendants had not claimed that they were prejudiced by reinstatement of plaintiffs' claims. *Bowyer v. District of Columbia*, 779 F.Supp.2d 159, 2011 U.S. Dist. LEXIS 46105 (2011).

Police officers forfeited claims against police chief under District of Columbia Whistleblower Protection Act (WPA), where officers did not

challenge chief's assertion on appeal of summary judgment in chief's favor that the WPA claims were barred by the statute of limitations. *Mentzer v. Lanier*, 408 Fed.Appx. 379, 2010 U.S. App. LEXIS 22262 (C.A.D.C. 2010).

Sufficiency of evidence.

There was no evidence that District of Columbia Department of Consumer and Regulatory Affairs (DCRA) employee's testimony before city council regarding state of elevator safety in the District of Columbia played any role in his subsequently being investigated, suspended, or terminated, precluding employee's First Amendment retaliation and District of Columbia Whistleblower Protection Act (DCWPA) claims; at most DCRA officials were eager to remove employee because he had been a difficult employee throughout his career, the DCRA agreed to let employee testify before the city council and never attempted to influence his testimony, and neither the hearing officer nor arbitrator who considered employee's challenges to adverse employment actions concluded that employee was treated differently than other employees. *Payne v. District of Columbia*, 808 F.Supp.2d 164, 2011 U.S. Dist. LEXIS 99519 (2011).

§ 1-615.52. Definitions.

(a) For purposes of this subchapter, the term:

(1) "Contract" means any contract for goods or services between the District government and another entity but excludes any collective bargaining agreement.

(2) "Contributing factor" means any factor which, alone or in connection with other factors, tends to affect in any way the outcome of the decision.

(3) "Employee" means any person who is a former or current District employee, or an applicant for employment by the District government, including but not limited to employees of subordinate agencies, independent agencies, the District of Columbia Board of Education, the Board of Trustees of the University of the District of Columbia, the District of Columbia Housing Authority, and the Metropolitan Police Department, but excluding employees of the Council of the District of Columbia.

(4) "Illegal order" means a directive to violate or to assist in violating a federal, state or local law, rule, or regulation.

(5)(A) "Prohibited personnel action" includes but is not limited to: recommended, threatened, or actual termination, demotion, suspension, or reprimand; involuntary transfer, reassignment, or detail; referral for psychiatric or psychological counseling; failure to promote or hire or take other favorable personnel action; or retaliating in any other manner against an employee because that employee makes a protected disclosure or refuses to comply with an illegal order, as those terms are defined in this section.

(B) For purposes of this paragraph, the term :

(i) "Investigation" includes an examination of fitness for duty and

excludes any ministerial or nondiscretionary factfinding activity necessary to perform the agency's mission.

(ii) "Retaliating" includes conducting or causing to be conducted an investigation of an employee or applicant for employment because of a protected disclosure made by the employee or applicant who is a whistleblower.

(6) "Protected disclosure" means any disclosure of information, not specifically prohibited by statute, without restriction to time, place, form, motive, context, forum, or prior disclosure made to any person by an employee or applicant, including a disclosure made in the ordinary course of an employee's duties by an employee to a supervisor or a public body that the employee reasonably believes evidences:

(A) Gross mismanagement;

(B) Gross misuse or waste of public resources or funds;

(C) Abuse of authority in connection with the administration of a public program or the execution of a public contract;

(D) A violation of a federal, state, or local law, rule, or regulation, or of a term of a contract between the District government and a District government contractor which is not of a merely technical or minimal nature; or

(E) A substantial and specific danger to the public health and safety.

(7) "Public body" means:

(A) The United States Congress, the Council, any state legislature, the District of Columbia Office of the Inspector General, the Office of the District of Columbia Auditor, the District of Columbia Financial Responsibility and Management Assistance Authority, or any member or employee of one of these bodies;

(B) The federal, District of Columbia, or any state or local judiciary, any member or employee of these judicial branches, or any grand or petit jury;

(C) Any federal, District of Columbia, state, or local regulatory, administrative, or public agency or authority or instrumentality of one of these agencies or authorities;

(D) Any federal, District of Columbia, state, or local law enforcement agency, prosecutorial office, or police or peace officer;

(E) Any federal, District of Columbia, state, or local department of an executive branch of government; or

(F) Any division, board, bureau, office, committee, commission or independent agency of any of the public bodies described in subparagraphs (A) through (E) of this paragraph.

(8) "Supervisor" means an individual employed by the District government who meets the definition of a "supervisor" in § 1-617.01(d) or who has the authority to effectively recommend or take remedial or corrective action for the violation of a law, rule, regulation or contract term, or the misuse of government resources that an employee may allege or report pursuant to this section, including without limitation an agency head, department director, or manager.

(9) "Whistleblower" means an employee who makes or is perceived to have made a protected disclosure as that term is defined in this section.

(Mar. 3, 1979, D.C. Law 2-139, § 1552, as added Oct. 7, 1998, D.C. Law 12-160, § 102(c), 45 DCR 5147; Mar. 11, 2010, D.C. Law 18-117, § 2(a), 57 DCR 896.)

Prior Codifications. — 1981 Ed., § 1-616.12.

Effect of amendments. — D.C. Law 18-117, in par. (5), designated the existing text as subpar. (A) and added subpar. (B); and, in par. (6), substituted “by statute, without restriction to time, place, form, motive, context, forum, or prior disclosure made to any person by an employee or applicant, including a disclosure made in the ordinary course of an employee’s duties,” for “by statute”.

Emergency legislation. — For temporary addition of subchapter, see note to § 1-615.51.

Legislative history of Law 12-160. — For legislative history of D.C. Law 12-160, see Historical and Statutory Notes following § 1-602.01.

Legislative history of Law 18-117. — Law 18-117, the “Whistleblower Protection Amendment Act of 2009”, was introduced in Council and assigned Bill No. 18-233, which was referred to the Committee on Government Operations and the Environment. The bill was adopted on first and second readings on December 1, 2009, and December 15, 2009, respectively. Signed by the Mayor on January 11, 2010, it was assigned Act No. 18-265 and transmitted to both Houses of Congress for its review. D.C. Law 18-117 became effective on March 11, 2010.

Editor’s notes. — This section was enacted with a subsection (a) but no subsection (b).

CASE NOTES

ANALYSIS

Jury instructions.

Pretext.

Prima facie case.

Prohibited personnel action.

Protected disclosure, reasonable belief.

Summary judgment.

Weight and sufficiency of evidence.

Jury instructions.

In District of Columbia employee’s suit for retaliation in violation of District of Columbia Whistleblower Protection Act (DC-WPA), district court would decline District’s invitation to instruct jury on scope of categorical exception for ministerial or nondiscretionary investigations and instead would provide jury with parties’ agreed-upon instruction which set forth definition of term “prohibited personnel action” prior to District of Columbia Whistleblower Protection Amendment Act (DC-WPAA); however, because parties were in agreement that retaliatory investigation was actionable both before and after DC-WPAA, court would revise instruction to expressly mention investigations. *Williams v. District of Columbia*, 825 F.Supp.2d 88, 2011 U.S. Dist. LEXIS 120713 (2011).

Pretext.

Employee’s lack of qualifications compared to alternate candidate was legitimate, non-retaliatory based reason for employee’s nonselection for officer position, and was not pretext for retaliation for employee’s protected disclosures to Office of Inspector General and complaints to Equal Employment Opportunity Council (EEOC) in violation of District of Columbia Whistleblower Protection Act; employee’s interview was not mere “courtesy,” employee’s allegations of favoritism during interview process were unsupported, and employee failed to make

coherent connection between his nonselection and period of vacancy of position. *Davis v. District of Columbia*, 503 F.Supp.2d 104, 2007 U.S. Dist. LEXIS 55278 (2007).

Prima facie case.

In order to establish prima facie case under District of Columbia Whistleblower Protection Act (DC-WPA), employee must allege facts establishing that she made a protected disclosure, that her supervisor retaliated or took or threatened to take a prohibited personnel action against her, and that her protected disclosure was a contributing factor to the retaliation or prohibited personnel action. *Tabb v. District of Columbia*, 605 F.Supp.2d 89, 2009 U.S. Dist. LEXIS 22057 (2009), modified by 2010 U.S. Dist. LEXIS 60373 (D.D.C. June 16, 2010).

Prohibited personnel action.

There was no evidence of a causal connection between diminished performance evaluations received by District of Columbia employees and the grievance letters the employees sent to District officials complaining of certain practices and alleged discrimination, as required to establish their claims under District of Columbia’s Whistleblower Protection Act (DCWPA). *Booth v. District of Columbia*, 701 F.Supp.2d 73, 2010 U.S. Dist. LEXIS 33194 (2010).

Police detective set forth a prima facie case that the Metropolitan Police Department (MPD) retaliated against him in violation of the District of Columbia Whistleblower Protection Act (DCWPA) after he made a protected disclosure about the MPD’s alleged mismanagement in investigating and tracking missing children and juvenile offenders, even though the District of Columbia argued that detective did not suffer an adverse employment action because the MPD chief rejected MPD’s recommendation that detective receive certain penalties; MPD recommended demotion, suspension, and invol-

untary transfer or reassignment as penalties for detective's alleged misdeeds, and such recommendations constituted a "prohibited personnel action" under the DCWPA. *Adams v. D.C.*, 139 WLR 1101 (Super. Ct. 2011).

Protected disclosure, reasonable belief.

District of Columbia Public Schools (DCPS) Division of Transportation (DOT) employees satisfied protected disclosure element of *prima facie* case under District of Columbia Whistleblower Protection Act (DCWPA) through oral and written statements regarding their supervisor, although their statements to Transportation Administrator about their supervisor's discriminatory treatment of Haitians and kickback scheme did not warrant WPA protection since he already was aware of those fraudulent activities; no pleading suggested that Mayor's office or DOT Assistant Manager knew of scheme before employees disclosed it to them, and Transportation Administrator allegedly did not know previously that their supervisor accepted bribes in exchange for paychecks and allowed her boyfriend to use DOT buses for personal purposes, employees did not allege that employer retaliated against them after they relayed already public complaints about perceived abuse, and employees pled reasonable belief that supervisor grossly mismanaged and abused her authority and violated employment discrimination laws. *Saint-Jean v. District of Columbia*, 846 F.Supp.2d 247, 2012 U.S. Dist. LEXIS 30445 (2012).

In employee's suit under District of Columbia Whistleblower Protection Act (DC-WPA), district court would, in exercise of its discretion, decline employee's request for jury instruction which tracked statutory definition of "whistleblower" as it had no meaningful relationship to facts of case; while DC-WPA defined "whistleblower" as "an employee who makes or is perceived to have made a protected disclosure," its operative liability section provided that "(a) supervisor should not take, or threaten to take, a prohibited personnel action or otherwise retaliate against an employee because of the employee's protected disclosure," and parties had already agreed to jury instruction tracking language of statutory definition of "protected disclosure" which required employee to reasonably believe disclosure was of type of information protected. *Williams v. District of Columbia*, 818 F.Supp.2d 197, 2011 U.S. Dist. LEXIS 119324 (2011).

Genuine issue of material fact as to whether two police officers reasonably believed that their disclosures to senior management, alleging that police officers in horse-mounted unit made false statements, negligently cared for their horses, submitted fraudulent requests for reimbursement and damaged relations with other mounted police units resulting in depri-

vation of training opportunities for unit officers, evidenced gross mismanagement by unit officials precluded summary judgment on two officers' claim that they suffered adverse employment actions in retaliation for engaging in activities protected by District of Columbia Whistleblower Protection Act (WPA). *Mentzer v. Lanier*, 677 F.Supp.2d 242, 2010 U.S. Dist. LEXIS 818 (2010).

District of Columbia employee responsible for administering youth basketball leagues did not make a "protected disclosure" under District of Columbia Whistleblower Protection Act (DC-WPA) by relaying to his supervisor that members of the public were calling Department of Parks and Recreation to complain that mayor's twin sons were playing in a league for which they were allegedly ineligible because of age, as members of the public had themselves perceived an alleged abuse of authority and were vociferously and repeatedly drawing attention to it. *Williams v. District of Columbia*, 9 A.3d 484, 2010 D.C. App. LEXIS 727 (2010).

Testimony by terminated District of Columbia employee to District Council about his termination was not a "protected disclosure" under District of Columbia Whistleblower Protection Act (DC-WPA), as necessary to support claim of retaliatory defamation under DC-WPA; employee disclosed to District Council what reasonable people might regard as a not-so-seriously-erroneous alleged reason for his termination, i.e., that he had relayed public complaints to his supervisor concerning alleged ineligibility of mayor's sons to play in a particular basketball league, which was also not a protected disclosure. *Williams v. District of Columbia*, 9 A.3d 484, 2010 D.C. App. LEXIS 727 (2010).

Employee's belief that his employer's new policy regarding taxpayer appeals was illegal did not meet the reasonable belief standard under the Whistleblower Protection Act, and thus, his belief did not protect his act of disclosing the allegedly "illegal" conduct; employer's new policy was clearly a proper exercise of discretion, and was consistent with employer's previous "five o'clock rule" allowing a taxpayer the option to withdraw his appeal on the day of the hearing. *Zirkle v. District of Columbia*, 830 A.2d 1250, 2003 D.C. App. LEXIS 540 (2003).

To determine whether one's belief is reasonable under the Whistleblower Protection Act, the "proper test" is as follows: could a disinterested observer with knowledge of the essential facts known to and readily ascertainable by the employee reasonably conclude that the actions of the government evidence illegality; a purely subjective perspective of an employee is not sufficient even if shared by other employees. *Zirkle v. District of Columbia*, 830 A.2d 1250, 2003 D.C. App. LEXIS 540 (2003).

Police detective set forth a *prima facie* case that he made a “protected disclosure” within the meaning of the District of Columbia Whistleblower Protection Act (DCWPA), i.e., a non-prohibited disclosure of information by an employee to a supervisor or public body that the employee reasonably believed evidenced certain misconduct, by means of a letter that was written and sent by Fraternal Order of Police (FOP) chairman to the District of Columbia’s Office of the Inspector General (OIG) about the Metropolitan Police Department’s alleged mismanagement in investigating and tracking missing children and juvenile offenders; FOP chairman made the disclosure on behalf of detective, given in part a statement in the letter that the “FOP and its members involved in this matter,” which included detective, “are making protected disclosures,” and not allowing detective to maintain his DCWPA action on the ground that he made an otherwise-protected disclosure to the wrong person would be contrary to the stated purpose of the DCWPA and public policy generally. *Adams v. D.C.*, 139 WLR 1101 (Super. Ct. 2011).

Summary judgment.

Genuine issues of material fact existed as to whether female employees were terminated from their positions with District of Columbia Department of Parks and Recreation as consequence of their complaints of sexual discrimination, precluding summary judgment on retaliation claim under District of Columbia Whistleblowers Protection Act (DCWPA). *Byrd v. District of Columbia*, 807 F.Supp.2d 37, 2011 U.S. Dist. LEXIS 90802 (2011), appeal dismissed by 2012 U.S. App. LEXIS 8717 (D.C. Cir. Apr. 9, 2012).

Genuine issue of material fact as to whether two police officers disclosed new information in their meeting with city councilmember to discuss stabling of horses used in city’s horse-mounted unit at federally owned facility reasonably precluded summary judgment on two officers’ claim that they suffered adverse employment actions in retaliation for engaging in activities protected by District of Columbia Whistleblower Protection Act (WPA). *Mentzer v. Lanier*, 677 F.Supp.2d 242, 2010 U.S. Dist. LEXIS 818 (2010).

Weight and sufficiency of evidence.

District of Columbia failed to establish that

employee had “conceded” applicability of “ministerial or nondiscretionary investigation” exception in her retaliation case, which involved conduct that transpired several years before District of Columbia Whistleblower Protection Amendment Act (DC-WPAA) became effective, or should be judicially estopped from contesting application of DC-WPAA insofar as it pertained to application of that exception. *Williams v. District of Columbia*, 825 F.Supp.2d 88, 2011 U.S. Dist. LEXIS 120713 (2011).

Fact that District of Columbia Department of Consumer and Regulatory Affairs (DCRA) employee apparently never received the back pay that he was owed when he was reinstated after being terminated established that he was deprived of property, but it did not establish that he was denied the process he was due under the Fifth Amendment, and instead employee received all the process due him under the Fifth Amendment in the form of a notice and a post-termination appeal process that ultimately led to the rescission of his termination; employee opted to pursue his right to contest his removal before a hearing officer, DCRA made a final decision following the hearing officer’s report, and employee failed to exhaust his administrative remedies as to his breach of contract claim for his back pay. *Payne v. District of Columbia*, 808 F.Supp.2d 164, 2011 U.S. Dist. LEXIS 99519 (2011).

Allegations of former employee of District of Columbia Office of Unified Communications (OUC) in her amended complaint that she spoke out against OUC proposal regarding routing of emergency and non-emergency calls because she was concerned that proposed changes would cause emergency calls to experience delay in service, that she engaged in protected disclosures expressing her concerns with OUC proposal to members of District Council and mayor, and that three days after her attempt to speak with mayor in person about proposed changes, she was placed on administrative leave by OUC Director, were sufficient to state claim against District for violation of District of Columbia Whistleblower Protection Act (WPA). *Jones v. Quintana*, 658 F.Supp.2d 183, 2009 U.S. Dist. LEXIS 90238 (2009).

§ 1-615.53. Prohibitions.

(a) A supervisor shall not take, or threaten to take, a prohibited personnel action or otherwise retaliate against an employee because of the employee’s protected disclosure or because of an employee’s refusal to comply with an illegal order.

(b) Except in cases where the communication would be unlawful, a person shall not interfere with or deny the right of employees, individually or

collectively, to furnish information to the Council, a Council committee, or a Councilmember.

(Mar. 3, 1979, D.C. Law 2-139, § 1553, as added Oct. 7, 1998, D.C. Law 12-160, § 102(c), 45 DCR 5147; Mar. 11, 2010, D.C. Law 18-117, § 2(b), 57 DCR 896.)

Prior Codifications. — 1981 Ed., § 1-616.13.

Effect of amendments. — D.C. Law 18-117 rewrote the section, which had read as follows: “A supervisor shall not threaten to take or take a prohibited personnel action or otherwise retaliate against an employee because of the employee’s protected disclosure or because of an employee’s refusal to comply with an illegal order.”

Emergency legislation. — For temporary addition of subchapter, see note to § 1-615.51.

Legislative history of Law 12-160. — For legislative history of D.C. Law 12-160, see Historical and Statutory Notes following § 1-602.01.

Legislative history of Law 18-117. — For Law 18-117, see notes following § 1-615.52.

CASE NOTES

ANALYSIS

Abandoned claims.
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Admissibility of evidence.
After-acquired evidence.
Causation.
Construction and application.
Discretion of court.
In general.
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Sufficiency of evidence.
Summary Judgment.

Abandoned claims.

District of Columbia employees’ claim for defamation by conduct was foreclosed by District of Columbia Comprehensive Merit Personnel Act (CMPA); one employee neither pled nor argued she exhausted her administrative remedies under either of CMPA’s two approved methods, and while two other employees triggered collective bargaining agreement (CBA) method of CMPA exhaustion by timely filing grievance in writing in accordance with provision of negotiated grievance procedure, after their Stage 2 grievance hearings were cancelled they did not proceed to final three steps of grievance procedure which culminate in arbitration, nor did they plead that they appealed any arbitration decision to Public Employee Relations Board. *Saint-Jean v. District of Columbia*, 846 F.Supp.2d 247, 2012 U.S. Dist. LEXIS 30445 (2012).

Former employee of District of Columbia Office of Unified Communications (OUC) would be considered to have abandoned claims against the District for violation of the District of Columbia Whistleblower Protection Act (WPA) and retaliation in violation of the Americans with Disabilities Act (ADA) that survived motion to dismiss, where employee filed second amended complaint including only §§ 1983 claim against OUC Director that court order authorized her to file and did not include the surviving claims against the District, district court offered multiple opportunities to employee represented by counsel to refile complaint including claims against the District and advised failure to do so would be treated as abandonment, and employee failed to refile or indicate intent to pursue claims other than the §§ 1983 claim. *Jones v. Quintana*, 665 F.Supp.2d 1, 2009 U.S. Dist. LEXIS 99441 (2009), dismissed by, remanded by 2011 U.S. App. LEXIS 9250 (D.C. Cir. May 5, 2011).

Absolute immunity.

Former employee of District of Columbia Office of Unified Communications (OUC) could not sue her former supervisor individually for alleged violations of District of Columbia Whistleblower Protection Act (WPA). *Jones v. Quintana*, 658 F.Supp.2d 183, 2009 U.S. Dist. LEXIS 90238 (2009).

Under District of Columbia Speech or Debate statute, District councilman was entitled to absolute immunity from subpoena issued by District employee, in her Whistleblower Protection Act (WPA) suit against her supervisors alleging retaliation for employee’s statements at council meeting and at private meeting with councilman; subpoena sought testimony and documents directly relating to councilman’s alleged investigation into employing agency’s possible wrongdoing, and councilman’s activi-

ties in relation to that investigation were within sphere of protected legislative activities, even if investigation was informal. *Williams v. Johnson*, 597 F.Supp.2d 107, 2009 U.S. Dist. LEXIS 12343 (2009).

Admissibility of evidence.

In career firefighter's suit against District of Columbia under D.C. Whistleblower Protection Act, vast array of circumstances in which other police and fire department employees were required to undergo fitness-for-duty examinations was not conceivably relevant, for discovery purposes, to issue of whether firefighter was subjected to prohibited personnel action, or to retaliation, by reason of her protected disclosure. *Coleman v. District of Columbia*, 275 F.R.D. 33, 2011 U.S. Dist. LEXIS 79131 (2011).

Nonparty in career firefighter's action alleging violations of D.C. Whistleblower Protection Act and negligent hiring, training and supervision was not entitled to protective order as to firefighter's request for documents, communications and electronically stored information relating to herself, which was relevant; however, the five other "Category B" requests were overly broad and irrelevant to firefighter's District of Columbia claims and nonparty was entitled to protective order in that regard. *Coleman v. District of Columbia*, 275 F.R.D. 33, 2011 U.S. Dist. LEXIS 79131 (2011).

After-acquired evidence.

Where there was a factual conflict between employee and employer as to whether the information about the falsification of employee's employment applications constituted "after-acquired" evidence in Whistleblower Protection Act (WPA) action, trial court did not commit error under the McKennon principle, holding that, where employer seeks to rely upon after-acquired evidence of wrongdoing, it must first establish that wrongdoing was of such severity that employee would have been terminated on those grounds alone if employer had known of it at time of discharge, when trial court awarded eighteen months of front pay and back pay. *Watkins v. District of Columbia*, 944 A.2d 1077, 2008 D.C. App. LEXIS 115 (2008).

Causation.

There was no evidence of a causal connection between diminished performance evaluations received by District of Columbia employees and the grievance letters the employees sent to District officials complaining of certain practices and alleged discrimination, as required to establish their claims under District of Columbia's Whistleblower Protection Act (DCWPA). *Booth v. District of Columbia*, 701 F.Supp.2d 73, 2010 U.S. Dist. LEXIS 33194 (2010).

District of Columbia employee failed to demonstrate causal nexus between her private statements to District Council member about

software program on which she was working and District's conduct in seeking her termination for violation of its residency requirement, as required to establish First Amendment retaliation claim under §§ 1983 and claim under District of Columbia Whistleblower Protection Act; employee failed to offer evidence that District was aware of her private meeting with member. *Booth v. District of Columbia*, 701 F.Supp.2d 73, 2010 U.S. Dist. LEXIS 33194 (2010).

Liability under the Whistleblower Protection Act is measured under a "but for" causation analysis. *Johnson v. District of Columbia*, 935 A.2d 1113, 2007 D.C. App. LEXIS 671 (2007).

Construction and application.

In employee's suit under District of Columbia Whistleblower Protection Act (DC-WPA), district court would, in exercise of its discretion, decline employee's request for instruction addressing categories of evidence that jury should consider in connection with District's burden of proof on its "same action" affirmative defense; parties had already agreed to instructions that would adequately present legal principles and standards to jury, and proposed instruction was more likely to confuse and mislead jury than crystallize issues relevant to its deliberations. *Williams v. District of Columbia*, 818 F.Supp.2d 202, 2011 U.S. Dist. LEXIS 119325 (2011).

Former District of Columbia attorney could not state claim for violation of District of Columbia Whistleblower Act against supervisor in his individual capacity, where Act did not create a private right of action against individual supervisors during period in which alleged violations took place, and amendments to act that authorized actions against individual supervisors were not retroactive. *Payne v. District of Columbia*, 773 F.Supp.2d 89, 2011 U.S. Dist. LEXIS 32977 (2011).

Employer, the Office of Tax and Revenue, acted within its discretion in allowing a taxpayer the option to withdraw the taxpayer's appeal if it appeared, after the first-level hearing, that an assessment increase would be justified, and thus, employee's compliance with employer's order, requiring employee to call the taxpayer's representative and refrain from issuing an increase, was not illegal and, thus, did not show that employee was the subject of a "prohibited personnel action" in violation of the Whistleblower Protection Act (WPA) when he was disciplined for failing to comply with the order; statute was silent as to how taxpayer appeals were to be conducted, and the office's deputy chief financial officer (DCFO) had broad discretion in deciding how to determine a property's estimated market value, and consequently, the estimated market value arrived at during the first-level appeal hearing was not necessarily the only possible assessment based

on the most current, accurate, and conclusive evidence. *Zirkle v. District of Columbia*, 830 A.2d 1250, 2003 D.C. App. LEXIS 540 (2003).

Discretion of court.

Trial court properly exercised its discretion in fashioning an equitable remedy in Whistleblower Protection Act (WPA) action by rescinding its initial order to reinstate Department of Corrections (DOC) employee and substituting, instead, an order for front and back pay; employee had never been adamant about returning to DOC, employee's concerns centered on back pay, benefits medical insurance, and his eligibility for retirement which front pay might protect, employee occupied sensitive position within DOC relating to records of inmates, and there was likelihood that DOC would move to terminate employee for giving false information on his employment applications, a process that likely would take approximately eighteen months. *Watkins v. District of Columbia*, 944 A.2d 1077, 2008 D.C. App. LEXIS 115 (2008).

In general.

A whistleblower statute shields an employee only to the extent the record supports a finding that he would not have been disciplined except for his status as a whistleblower. *Johnson v. District of Columbia*, 935 A.2d 1113, 2007 D.C. App. LEXIS 671 (2007).

While a public employee makes a prima facie case of retaliation under the Whistleblower Protection Act by showing that the protected disclosure was a contributing factor to the disciplinary action, a jury must find a direct causal link in order for there to be liability. *Johnson v. District of Columbia*, 935 A.2d 1113, 2007 D.C. App. LEXIS 671 (2007).

Inferences.

An inference of retaliation following a protected disclosure cannot rest solely on temporal proximity, in order to support a claim under the Whistleblower Protection Act, even if it is established, where the opportunity for retaliation conflicts with the opponent's explicit evidence of an innocent explanation of the event. *Johnson v. District of Columbia*, 935 A.2d 1113, 2007 D.C. App. LEXIS 671 (2007).

Notice.

District of Columbia's Whistleblower Act required former District of Columbia school district employee to give notice to Mayor of approximate time, place, cause, and circumstances of injury or damage within six months of his injury in order to maintain an action under the Act; Act's notice requirement did not apply only to actions for unliquidated damages. *Winder v. Erste*, 566 F.3d 209, 2009 U.S. App. LEXIS 10296 (C.A.D.C. 2009).

District court properly determined at the pleading stage that District of Columbia police officer was required to give notice to Mayor of approximate time, place, cause, and circumstances of injury or damage within six months of his injury in order to maintain claims under the Whistleblower Act and for intentional infliction of emotional distress. *McGee v. District of Columbia*, 723 F.Supp.2d 161, 2010 U.S. Dist. LEXIS 70893 (2010), affirmed by 2010 U.S. App. LEXIS 25905 (D.C. Cir. Dec. 17, 2010).

Discharged employee of the District of Columbia Department of Consumer and Regulatory Affairs (DCRA) was required to provide notice of his claims against District of Columbia under District of Columbia Whistleblower Protection Act (DCWPA) within six months after alleged injury or damage was sustained. *Payne v. District of Columbia*, 741 F.Supp.2d 196, 2010 U.S. Dist. LEXIS 103039 (2010).

District of Columbia's Whistleblower Act required employee with District of Columbia Metropolitan Police Department (MPD) to give notice to Mayor of approximate time, place, cause, and circumstances of injury or damage within six months of his injury in order to maintain action under Act; Act's notice requirement did not apply only to actions for unliquidated damages. *McGee v. District of Columbia*, 646 F.Supp.2d 115, 2009 U.S. Dist. LEXIS 74572 (2009).

District of Columbia's attempts to contact former agency chief of staff by telephone and email were not reasonable diligence to procure his attendance at trial for employee's action alleging retaliation in violation of District of Columbia Whistleblower Protection Act (DCWPA), for purposes of determining whether chief was an unavailable witness, such that District could use his deposition testimony; District did not attempt to contact chief in month and 19 days after first court order to ensure witness availability for trial, and email and phone calls were not attempts to secure his attendance by subpoena. *Williams v. Johnson*, 278 F.R.D. 1, 2011 U.S. Dist. LEXIS 133281 (2011).

Presumptions and burden of proof.

In order to establish a prima facie case under the Whistleblower Protection Act on the basis of the public employee's statements, the employee has to allege facts establishing that she made a protected disclosure, that a supervisor retaliated or took or threatened to take a prohibited personnel action against her, and that her protected disclosure was a contributing factor to the retaliation or prohibited personnel action. *Wilburn v. District of Columbia*, 957 A.2d 921, 2008 D.C. App. LEXIS 414 (2008).

A public employee makes a prima facie case of retaliation under the Whistleblower Protec-

tion Act by showing that a protected disclosure was a contributing factor in the prohibited personnel action, while a jury must find “but for” causation in order to impose liability. *Wilburn v. District of Columbia*, 957 A.2d 921, 2008 D.C. App. LEXIS 414 (2008).

In Whistleblower Protection Act (WPA) action, Department of Corrections (DOC) did not satisfy its burden to show that employee failed to take reasonable efforts to mitigate his damages by finding alternative employment; employee applied for eight jobs after his termination, and there were limitations on employee’s ability to find other employment due to his firing after seventeen years of employment in a specialized but narrowly focused job at DOC, and because of his lawsuit against DOC which was designed to get his job back. *Watkins v. District of Columbia*, 944 A.2d 1077, 2008 D.C. App. LEXIS 115 (2008).

District of Columbia set forth a legitimate, non-retaliatory reason for taking adverse employment action against police detective after he made a protected disclosure about the MPD’s alleged mismanagement in investigating and tracking missing children and juvenile offenders, so as to shift the burden to detective, who had worked in the missing-persons unit of the MPD’s Youth Investigations Division (YID), to show that the stated reason was a pretext for retaliation in violation of the District of Columbia Whistleblower Protection Act (DCWPA); detective’s supervisors allegedly found 91 case files that detective had failed to properly close and 223 case files that he had failed to investigate, no other YID members were alleged to have hidden files or failed to close or investigate files to the extent that detective failed to do so, and MPD’s charge against detective for neglect of duty appeared plain based on detective’s alleged failure to close or investigate 314 cases. *Adams v. D.C.*, 139 WLR 1101 (Super. Ct. 2011).

Private right of action.

District of Columbia Whistleblower Protection Act (DCWPA) did not create private right of action against individual supervisors, in action brought by discharged employee of District of Columbia Department of Consumer and Regulatory Affairs (DCRA), alleging that he was unlawfully terminated from his job as elevator inspector because he spoke out publicly about elevator safety and vigorously enforced elevator safety standards. *Payne v. District of Columbia*, 741 F.Supp.2d 196, 2010 U.S. Dist. LEXIS 103039 (2010).

Protected disclosures.

District of Columbia Public Schools (DCPS) Division of Transportation (DOT) employees satisfied protected disclosure element of prima facie case under District of Columbia Whistleblower Protection Act (DCWPA)

through oral and written statements regarding their supervisor, although their statements to Transportation Administrator about their supervisor’s discriminatory treatment of Haitians and kickback scheme did not warrant WPA protection since he already was aware of those fraudulent activities; no pleading suggested that Mayor’s office or DOT Assistant Manager knew of scheme before employees disclosed it to them, and Transportation Administrator allegedly did not know previously that their supervisor accepted bribes in exchange for paychecks and allowed her boyfriend to use DOT buses for personal purposes, employees did not allege that employer retaliated against them after they relayed already public complaints about perceived abuse, and employees pled reasonable belief that supervisor grossly mismanaged and abused her authority and violated employment discrimination laws. *Saint-Jean v. District of Columbia*, 846 F.Supp.2d 247, 2012 U.S. Dist. LEXIS 30445 (2012).

Disclosures made by department of transportation chief of staff regarding construction company’s acts to fraudulently obtain department funding for contracts were “protected disclosures” under District of Columbia Whistleblower Protection Act, as required for chief of staff’s whistleblower claim against District of Columbia; reports concerned allegations of fraud, and chief of staff had reasonable basis to believe that fraud was illegal. *Amos v. District of Columbia*, 589 F.Supp.2d 48, 2008 U.S. Dist. LEXIS 101461 (2008).

Testimony by terminated District of Columbia employee to District Council about his termination was not a “protected disclosure” under District of Columbia Whistleblower Protection Act (DCWPA), as necessary to support claim of retaliatory defamation under DCWPA; employee disclosed to District Council what reasonable people might regard as a not-so-seriously-erroneous alleged reason for his termination, i.e., that he had relayed public complaints to his supervisor concerning alleged ineligibility of mayor’s sons to play in a particular basketball league, which was also not a protected disclosure. *Williams v. District of Columbia*, 9 A.3d 484, 2010 D.C. App. LEXIS 727 (2010).

Statements by former interim director of Office of Human Rights in which she criticized performance of law firm contracted to investigate claims of human rights violations were not “protected disclosures” within meaning of Whistleblower Protection Act; statements conveyed information that had been known for some time both within and outside of Office of Human Rights (OHR), previous director and OHR staff had already begun to question quality of law firm’s performance, and statements did not disclose gross mismanagement, gross misuse or waste of public resources or funds.

Wilburn v. District of Columbia, 957 A.2d 921, 2008 D.C. App. LEXIS 414 (2008).

In order to establish prima facie case under District of Columbia Whistleblower Protection Act (DC-WPA), employee must allege facts establishing that she made a protected disclosure, that her supervisor retaliated or took or threatened to take a prohibited personnel action against her, and that her protected disclosure was a contributing factor to the retaliation or prohibited personnel action. *Tabb v. District of Columbia*, 605 F.Supp.2d 89, 2009 U.S. Dist. LEXIS 22057 (2009), modified by 2010 U.S. Dist. LEXIS 60373 (D.D.C. June 16, 2010).

Questions of fact.

Genuine issue of material fact, as to whether former District of Columbia Child and Family Services Agency (CFSA) employee made a "protected disclosure" when she revealed that children were sleeping in CFSA office or whether that fact was well known, precluded summary judgment on her claim under District of Columbia Whistleblower Protection Act (DC-WPA). *Tabb v. District of Columbia*, 605 F.Supp.2d 89, 2009 U.S. Dist. LEXIS 22057 (2009), modified by 2010 U.S. Dist. LEXIS 60373 (D.D.C. June 16, 2010).

Issue of whether District of Columbia employee reasonably believed her testimony before District Council and her statements to council member regarding software project she was working on evidenced gross mismanagement, misuse or waste of public funds, abuse of authority in connection with public contract, or violation of term of District contract not of merely technical or minimal nature involved fact questions that could not be resolved on motion to dismiss employee's claim against her supervisors for violations of District of Columbia Whistleblower Protection Act (WPA). *Williams v. Johnson*, 537 F.Supp.2d 141, 2008 U.S. Dist. LEXIS 19482 (2008).

Reinstatement.

In Whistleblower Protection Act (WPA) case, trial court may reasonably conclude that reinstatement would not serve the interests of justice where the employee engaged in behavior that could conceivably have given rise to a legitimate discharge under other circumstances. *Watkins v. District of Columbia*, 944 A.2d 1077, 2008 D.C. App. LEXIS 115 (2008).

Although reinstatement would technically make the plaintiff whole, larger considerations of the relationship between the plaintiff and the employer and, indeed, the environment in which their relationship is situated, militate against ordering reinstatement in Whistleblower Protection Act (WPA) cases. *Watkins v. District of Columbia*, 944 A.2d 1077, 2008 D.C. App. LEXIS 115 (2008).

Although reinstatement is certainly a preferred remedy in Whistleblower Protection Act (WPA) cases, it may not always be an appropriate one, and whether reinstatement is indeed appropriate may be determined only after careful consideration of the circumstances of a particular case. *Watkins v. District of Columbia*, 944 A.2d 1077, 2008 D.C. App. LEXIS 115 (2008).

Retaliation.

Legitimate, non-discriminatory reasons proffered by District of Columbia Department of Consumer and Regulatory Affairs (DCRA) for terminating elevator inspector who made disclosures to city counsel and media regarding state of elevator safety in District, namely, that Office of Inspector General (OIG) report concluded that employee had solicited work for his personal business as third-party inspector while on duty, in violation of District Code, and that employee had violated written work policies requiring inspectors to contact their supervisors for approval before sealing an elevator out of service, were not pretext for retaliation under District of Columbia Whistleblower Protection Act (DCWPA). *Payne v. District of Columbia*, 741 F.Supp.2d 196, 2010 U.S. Dist. LEXIS 103039 (2010).

Documents and statements indicating that police officers spoke with police officials regarding request for patrol car for their detail at high school, together with letter from high school principal about advantages of having patrol car on school property, did not demonstrate that officials' reason for temporary revocation of officers' police powers, namely, investigation of unrelated complaint for excessive use of force, was pretext for retaliation for having requested patrol car, as required to support claim under Whistleblower Protection Act. *Johnson v. District of Columbia*, 935 A.2d 1113, 2007 D.C. App. LEXIS 671 (2007).

Police officials' investigation of unrelated complaint for excessive use of force was permissible, non-retaliatory reason for temporarily revoking police officers' police powers pending investigation, for purposes of action against District of Columbia and police officials under Whistleblower Protection Act. *Johnson v. District of Columbia*, 935 A.2d 1113, 2007 D.C. App. LEXIS 671 (2007).

Review.

In suit under District of Columbia Whistleblower Protection Act (DC-WPA), it was inappropriate for district court to provide District's proposed jury instruction in articulating legal standards governing employee's hostile work environment claims; instead, upon request and with appropriate evidentiary foundation, court would consider (a) instructing jury to disregard any individual acts that were "dif-

ferent in kind” or “remote in time” that they could not be part of the same hostile work environment and (b) directing jury to avoid awarding duplicative damages for the same injury. *Williams v. District of Columbia*, 825 F.Supp.2d 88, 2011 U.S. Dist. LEXIS 120713 (2011).

In District of Columbia employee’s suit for retaliation in violation of District of Columbia Whistleblower Protection Act (DC-WPA), district court would decline District’s invitation to instruct jury on scope of categorical exception for ministerial or nondiscretionary investigations and instead would provide jury with parties’ agreed-upon instruction which set forth definition of term “prohibited personnel action” prior to District of Columbia Whistleblower Protection Amendment Act (DC-WPAA); however, because parties were in agreement that retaliatory investigation was actionable both before and after DC-WPAA, court would revise instruction to expressly mention investigations. *Williams v. District of Columbia*, 825 F.Supp.2d 88, 2011 U.S. Dist. LEXIS 120713 (2011).

District of Columbia Office of Personnel’s dismissal of charges against employee alleging that she violated District’s residency requirement did not collaterally estop District from raising residency issue in her action alleging retaliation in violation of District of Columbia Whistleblower Protection Act (DCWPA); Office’s dismissal was based on its conclusion that District failed to meet its burden of proof, which was not equivalent to finding that employee was not subject to residency requirement. *Williams v. Johnson*, 747 F.Supp.2d 10, 2010 U.S. Dist. LEXIS 115350 (2010).

Trial court’s decision awarding employee only \$9,532.00 of the \$17,199.05 requested in his fourth motion for the award of attorney fees and costs, even though he was the prevailing party in Whistleblower Protection Act (WPA) action, could not be characterized as reflecting a very strong showing of abuse of discretion requiring reversal; part of the requested attorney fees related to interlocutory appeals where employee was not yet a prevailing party, frivolous motions, and clerical or secretarial tasks billed at an attorney or paralegal rate. *Watkins v. District of Columbia*, 944 A.2d 1077, 2008 D.C. App. LEXIS 115 (2008).

Trial court has broad discretion to fashion appropriate equitable relief for a Whistleblower Protection Act (WPA) plaintiff including, but not limited to, reinstatement, and therefore, appellate court’s review is limited to determining whether the trial court abused that discretion. *Watkins v. District of Columbia*, 944 A.2d 1077, 2008 D.C. App. LEXIS 115 (2008).

Sufficiency of evidence.

Evidence proffered by discharged employee of District of Columbia Department of Consumer

and Regulatory Affairs (DCRA), who made disclosures to city council and media regarding state of elevator safety in District, including newspaper articles stating that employee had spot-checked more than 200 inspections performed by third-party companies in one year and found problems in every case, and describing employee’s reputation as whistleblower, and set of e-mails from individuals who were contacted by DCRA about employee’s distribution of personal business cards while on official duty, did not support inference that real reason for employee’s suspension and termination was retaliation for engaging in protected activity, as would support employee’s claim under District of Columbia Whistleblower Protection Act (DCWPA). *Payne v. District of Columbia*, 741 F.Supp.2d 196, 2010 U.S. Dist. LEXIS 103039 (2010).

Allegations of former employee of District of Columbia Office of Unified Communications (OUC) in her amended complaint that she spoke out against OUC proposal regarding routing of emergency and non-emergency calls because she was concerned that proposed changes would cause emergency calls to experience delay in service, that she engaged in protected disclosures expressing her concerns with OUC proposal to members of District Council and mayor, and that three days after her attempt to speak with mayor in person about proposed changes, she was placed on administrative leave by OUC Director, were sufficient to state claim against District for violation of District of Columbia Whistleblower Protection Act (WPA). *Jones v. Quintana*, 658 F.Supp.2d 183, 2009 U.S. Dist. LEXIS 90238 (2009).

While an employee makes a prima facie case by showing that the protected disclosure was a contributing factor to the disciplinary action, a jury must find a direct causal link in order for there to be liability under the Whistleblower Protection Act (WPA). *Crawford v. District of Columbia*, 891 A.2d 216, 2006 D.C. App. LEXIS 15 (2006).

Summary Judgment.

Genuine issues of material fact existed as to whether District of Columbia employee’s statements before District Council Committee that software project on which she was working was only capable of collecting demographic data and would not be fully functional as scheduled disclosed information not publicly known and whether statements concerned gross abuse, precluding summary judgment for District in employee’s action alleging retaliation in violation of District of Columbia Whistleblower Protection Act. *Williams v. Johnson*, 701 F.Supp.2d 1, 2010 U.S. Dist. LEXIS 25537 (2010).

Even a combination of temporal proximity between a protected disclosure and an adverse

employment action, when established, and suspicion, is not enough to avoid summary judgment in an action under the Whistleblower Protection Act. *Johnson v. District of Columbia*, 935 A.2d 1113, 2007 D.C. App. LEXIS 671 (2007).

Genuine issue of material fact existed as to whether a legitimate, non-retaliatory reason set forth by the District of Columbia for taking

adverse employment action against police detective after he made a protected disclosure was pretext for retaliation, precluding summary judgment on detective's claim against the District of Columbia for a violation of the District of Columbia Whistleblower Protection Act (DCWPA). *Adams v. D.C.*, 139 WLR 1101 (Super. Ct. 2011).

§ 1-615.54. Enforcement.

(a)(1) An employee aggrieved by a violation of § 1-615.53 may bring a civil action against the District, and, in his or her personal capacity, any District employee, supervisor, or official having personal involvement in the prohibited personnel action, before a court or a jury in the Superior Court of the District of Columbia seeking relief and damages, including:

(A) An injunction;

(B) Reinstatement to the same position held before the prohibited personnel action or to an equivalent position;

(C) Reinstatement of the employee's seniority rights;

(D) Restoration of lost benefits;

(E) Back pay and interest on back pay;

(F) Compensatory damages; and

(G) Reasonable costs and attorney fees.

(2) A civil action shall be filed within 3 years after a violation occurs or within one year after the employee first becomes aware of the violation, whichever occurs first.

(3) Section 12-309 shall not apply to any civil action brought under this section.

(b) In a civil action or administrative proceeding, once it has been demonstrated by a preponderance of the evidence that an activity proscribed by § 1-615.53 was a contributing factor in the alleged prohibited personnel action against an employee, the burden of proof shall be on the defendant to prove by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if the employee had not engaged in activities protected by this section.

(c) Notwithstanding any other provision of law, a violation of § 1-615.53 constitutes a complete affirmative defense for a whistleblower to a prohibited personnel action in an administrative review, challenge, or adjudication of that action.

(d) An employee who prevails in a civil action at the trial level, shall be granted the equitable relief provided in the decision effective upon the date of the decision, absent a stay.

(e)(1) If a protected disclosure assists in securing the right to recover, the actual recovery of, or the prevention of loss of more than \$100,000 in public funds, the Mayor may pay a reward in any amount between \$5,000 and \$50,000 to the person who made the protected disclosure; provided, that any reward shall be recommended by the Inspector General, the District of Columbia Auditor, or other similar law enforcement authority.

(2) This subsection shall not create any right or benefit, substantive or procedural, enforceable at law or equity, by a party against any District government agency, instrumentality, officer, employee, or other person.

(Mar. 3, 1979, D.C. Law 2-139, § 1554, as added Oct. 7, 1998, D.C. Law 12-160, § 102(c), 45 DCR 5147; Mar. 11, 2010, D.C. Law 18-117, § 2(c), 57 DCR 896.)

Prior Codifications. — 1981 Ed., § 1-616.14.

Effect of amendments. — D.C. Law 18-117 rewrote subsec. (a); in subsec. (b), substituted “defendant” for “employing District agency”; and added subsec. (e).

Emergency legislation. — For temporary addition of subchapter, see note to § 1-615.51.

Legislative history of Law 12-160. — For legislative history of D.C. Law 12-160, see Historical and Statutory Notes following § 1-602.01.

Legislative history of Law 18-117. — For Law 18-117, see notes following § 1-615.52.

CASE NOTES

ANALYSIS

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Evidence proffered by discharged employee of District of Columbia Department of Consumer and Regulatory Affairs (DCRA), who made disclosures to city council and media regarding state of elevator safety in District, including newspaper articles stating that employee had spot-checked more than 200 inspections performed by third-party companies in one year and found problems in every case, and describing employee’s reputation as whistleblower, and set of e-mails from individuals who were contacted by DCRA about employee’s distribution of personal business cards while on official duty, did not support inference that real reason for employee’s suspension and termination was retaliation for engaging in protected activity, as would support employee’s claim under District of Columbia Whistleblower Protection Act (DCWPA). *Payne v. District of Columbia*, 741 F.Supp.2d 196, 2010 U.S. Dist. LEXIS 103039 (2010).

Employee’s loss of a potential job offer as a result of his termination did not constitute irreparable harm for purposes of showing that his employer should be enjoined from terminating his employment, pending the outcome of his suit brought under the Whistleblower Protection Act; reinstatement with back pay would be an adequate remedy if employee were to prevail on the merits of his suit. *Zirkle v. District of*

Columbia, 830 A.2d 1250, 2003 D.C. App. LEXIS 540 (2003).

Employee’s mere statement that the “risk that other employees may be deterred from providing testimony or from protecting their own rights has been found by other courts to constitute irreparable harm” was inadequate to establish irreparable harm, for purposes of showing that his employer should be enjoined from terminating his employment, pending the outcome of his suit brought under the Whistleblower Protection Act, where employee offered no evidence of a chilling effect on other employees, and record did not establish any history of retaliation by the employer. *Zirkle v. District of Columbia*, 830 A.2d 1250, 2003 D.C. App. LEXIS 540 (2003).

Record was sufficient to support finding that employee’s termination did not result from his “disclosure” of allegedly illegal conduct of his employer, the Office of Tax and Revenue (OTR) to authorities, but was in response to a cumulative and willful act of poor judgment that reached the stage of willful insubordination, and thus, the employee could not show a substantial likelihood that he would prevail on the merits of his suit under the Whistleblower Protection Act; employer’s deputy chief financial officer (DCFO) stated that on five previous occasions employee had been counseled for behaving in an intimidating and condescending manner, and that he, himself, felt threatened by employee’s conduct in confronting him over a memorandum he had sent to managers, and employee admitted that he had sent out notices to taxpayers that their assessments were being increased, which the trial court found was a “knowing violation” of the chief assessor’s directive. *Zirkle v. District of Columbia*, 830 A.2d 1250, 2003 D.C. App. LEXIS 540 (2003).

Immunity.

Former employee of District of Columbia Office of Unified Communications (OUC) could

not sue her former supervisor individually for alleged violations of District of Columbia Whistleblower Protection Act (WPA). *Jones v. Quintana*, 658 F.Supp.2d 183, 2009 U.S. Dist. LEXIS 90238 (2009).

Instructions.

In employee's suit under District of Columbia Whistleblower Protection Act (DC-WPA), district court would, in exercise of its discretion, decline employee's request for instruction addressing categories of evidence that jury should consider in connection with District's burden of proof on its "same action" affirmative defense; parties had already agreed to instructions that would adequately present legal principles and standards to jury, and proposed instruction was more likely to confuse and mislead jury than crystallize issues relevant to its deliberations. *Williams v. District of Columbia*, 818 F.Supp.2d 202, 2011 U.S. Dist. LEXIS 119325 (2011).

Jurisdiction.

District Court would not exercise supplemental jurisdiction over whistleblower claim under District of Columbia law brought by former employee of city health department in removed action against her former employer and co-workers, where her claims under federal law had been dismissed, and law in the District of Columbia relative to its whistleblower statute was in its infant stages of development. *Lowe v. District of Columbia*, 669 F.Supp.2d 18, 2009 U.S. Dist. LEXIS 106032 (2009).

Limitations.

Discharged employee of District of Columbia Department of Consumer and Regulatory Affairs (DCRA) was required to bring claims against DCRA under the District of Columbia Whistleblower Protection Act (DCWPA) within one year after he first becomes aware of the violation when he was given notice of his termination, since employee never argued that he did not discover that his termination was retaliatory until some later date. *Payne v. District of Columbia*, 808 F.Supp.2d 164, 2011 U.S. Dist. LEXIS 99519 (2011).

Amendment to District of Columbia Whistleblower Protection Act (DCWPA) providing that an aggrieved employee may bring a civil action against the District, and, in his or her personal capacity, any District employee, supervisor, or official having personal involvement in the prohibited personnel action, did not apply retroactively to District of Columbia police officer's claims against individual police officials for actions that occurred prior to the time the DCWPA was amended; as originally enacted the DCWPA provided a cause of action only against the District of Columbia, the amendment did not purport to be retroactive in application, and applying the statute retroactively would impose civil liability where there

once was none. *Baumann v. District of Columbia*, 775 F.Supp.2d 191, 2011 U.S. Dist. LEXIS 38395 (2011).

Statute of limitations for District of Columbia Whistleblower Protection Act began to run when employer's alleged retaliatory conduct toward employee occurred, or within one year after employee first became aware of such conduct. *Davis v. District of Columbia*, 503 F.Supp.2d 104, 2007 U.S. Dist. LEXIS 55278 (2007).

Failure to provide notice of circumstances of injury or damage within six months, as required by District of Columbia statute, precluded claim under District of Columbia whistleblower statute. *Bowie v. Gonzales*, 433 F.Supp.2d 24, 2006 U.S. Dist. LEXIS 26159 (2006), affirmed by 642 F.3d 1122, 395 U.S. App. D.C. 301, 2011 U.S. App. LEXIS 12472, 112 Fair Empl. Prac. Cas. (BNA) 872 (2011).

Police officers' failure to present any evidence supporting assertion that their request to police officials for patrol car for their detail at high school was contributing or motivating factor for temporary suspension four months later during course of unrelated investigation by officials of excessive force complaint against officers precluded establishment of prima facie claim of retaliation against District of Columbia and police officials under either First Amendment and Whistleblower Protection Act. *Johnson v. District of Columbia*, 935 A.2d 1113, 2007 D.C. App. LEXIS 671 (2007).

Former employee's claim of District of Columbia Whistleblower Protection Act (DCWPA) violations was filed within the limitations period for filing DCWPA lawsuits to the extent that the claim was premised on the termination of former employee's job at the Department of Human Services, where former employee filed the claim within three years of his termination and less than one year after he first learned that the termination allegedly violated the DCWPA. *Davis v. D.C.*, 138 WLR 2497 (Super. Ct. 2010).

Former employee's claim of District of Columbia Whistleblower Protection Act (DCWPA) violations was not filed within the limitations period for filing DCWPA lawsuits to the extent that the claim was premised on certain adverse actions taken by former employer, which was the Department of Human Services, against former employee, including transferring him to a juvenile detention facility and failing to assign certain duties to him; former employee, by his own theory, knew of the adverse actions and their allegedly retaliatory nature as they occurred, and former employee filed his claim more than one year after the adverse actions. *Davis v. D.C.*, 138 WLR 2497 (Super. Ct. 2010).

Notice.

District of Columbia employees' claims against District of Columbia under the District

of Columbia's Whistleblower Protection Act (DCWPA) were barred by statutory provision requiring six months notice prior to suing the District for unliquidated damages, where employees asserted to the court that they were informed by their former counsel that he had provided timely notice of their claims, but two years passed without their having provided any supplemental evidence to corroborate that they did in fact submit the necessary notices. *Booth v. District of Columbia*, 701 F.Supp.2d 73, 2010 U.S. Dist. LEXIS 33194 (2010).

An amendment that rendered a notice statute, specifically the statute prohibiting the maintenance of any action against the District of Columbia for unliquidated damages unless certain written notice was provided to the mayor within six months after the injury was suffered or the damage was incurred, inapplicable to District of Columbia Whistleblower Protection Act (DCWPA) lawsuits applied retroactively to a DCWPA claim that was brought before the amendment; the notice statute was procedural in nature, and the District of Columbia Council viewed the elimination of the notice requirement as a change in procedural law. *Davis v. D.C.*, 138 WLR 2497 (Super. Ct. 2010).

An amendment that changed the limitations period for filing District of Columbia Whistleblower Protection Act (DCWPA) lawsuits from one year to three years after a violation occurred or one year after an employee became aware of a violation, whichever occurred first, applied retroactively to a DCWPA claim that was brought before the amendment; changes in statutes of limitation that did not impinge on vested substantive rights also constituted changes in procedural law, and the District of Columbia Council viewed the expansion of the limitations period as a procedural change. *Davis v. D.C.*, 138 WLR 2497 (Super. Ct. 2010).

Presumptions and burden of proof.

Although district court, in granting summary judgment to District of Columbia Department of Consumer and Regulatory Affairs (DCRA) on discharged employee's District of Columbia Whistleblower Protection Act (DCWPA) claims, improperly ruled that employee had to provide DCRA notice of his claims prior to filing suit, in light of the amendments to the DCWPA which eliminated the pre-suit notice requirement for all pending cases, the court's improper ruling did not provide a basis for the court to amend its judgment, since employee's claim arising from the only adverse action for which he had failed to give pre-suit notice was otherwise time-barred. *Payne v. District of Columbia*, 808 F.Supp.2d 164, 2011 U.S. Dist. LEXIS 99519 (2011).

In order to establish a prima facie case under the Whistleblower Protection Act on the basis of the public employee's statements, the employee has to allege facts establishing that she made a protected disclosure, that a supervisor retaliated or took or threatened to take a prohibited personnel action against her, and that her protected disclosure was a contributing factor to the retaliation or prohibited personnel action. *Wilburn v. District of Columbia*, 957 A.2d 921, 2008 D.C. App. LEXIS 414 (2008).

A public employee makes a prima facie case of retaliation under the Whistleblower Protection Act by showing that a protected disclosure was a contributing factor in the prohibited personnel action, while a jury must find "but for" causation in order to impose liability. *Wilburn v. District of Columbia*, 957 A.2d 921, 2008 D.C. App. LEXIS 414 (2008).

Jury finding that removal of employee would have occurred for legitimate, independent reasons even if the employee had not made protected disclosures precluded declaratory and injunctive relief under the Whistleblower Protection Act (WPA), even though the jury also found that protected disclosure was a contributing factor in removal from position of general counsel for taxicab commission; the jury's finding was not a determination that employee suffered adverse action because of protected disclosure, and a "contributing factor" finding was not meant to be sufficient basis for relief in civil action. *Crawford v. District of Columbia*, 891 A.2d 216, 2006 D.C. App. LEXIS 15 (2006).

After a plaintiff makes a prima facie case under the Whistleblower Protection Act (WPA) that protected disclosure was a contributing factor in dismissal, the burden shifts to the defendant to show by clear and convincing evidence that the plaintiff's dismissal would have occurred for legitimate, independent reasons, even if the plaintiff had not engaged in activities protected under the Act. *Crawford v. District of Columbia*, 891 A.2d 216, 2006 D.C. App. LEXIS 15 (2006).

Private right of action.

District of Columbia Whistleblower Protection Act (DCWPA) did not create private right of action against individual supervisors, in action brought by discharged employee of District of Columbia Department of Consumer and Regulatory Affairs (DCRA), alleging that he was unlawfully terminated from his job as elevator inspector because he spoke out publicly about elevator safety and vigorously enforced elevator safety standards. *Payne v. District of Columbia*, 741 F.Supp.2d 196, 2010 U.S. Dist. LEXIS 103039 (2010).

Retaliation.

Legitimate, non-discriminatory reasons proffered by District of Columbia Department of

Consumer and Regulatory Affairs (DCRA) for terminating elevator inspector who made disclosures to city counsel and media regarding state of elevator safety in District, namely, that Office of Inspector General (OIG) report concluded that employee had solicited work for his personal business as third-party inspector while on duty, in violation of District Code, and

that employee had violated written work policies requiring inspectors to contact their supervisors for approval before sealing an elevator out of service, were not pretext for retaliation under District of Columbia Whistleblower Protection Act (DCWPA). *Payne v. District of Columbia*, 741 F.Supp.2d 196, 2010 U.S. Dist. LEXIS 103039 (2010).

§ 1-615.55. Disciplinary actions; fine.

(a) As part of the relief ordered in an administrative, arbitration or judicial proceeding, any person who is found to have violated § 1-615.53 or § 2-223.02 shall be subject to appropriate disciplinary action including dismissal.

(b) As part of the relief ordered in a judicial proceeding, any person who is found to have violated § 1-615.53 or § 2-223.02 shall be subject to a civil fine not to exceed \$10,000.

(Mar. 3, 1979, D.C. Law 2-139, § 1555, as added Oct. 7, 1998, D.C. Law 12-160, § 102(c), 45 DCR 5147; Mar. 11, 2010, D.C. Law 18-117, § 2(d), 57 DCR 896.)

Prior Codifications. — 1981 Ed., § 1-616.15.

Effect of amendments. — D.C. Law 18-117 rewrote the section, which had read as follows: “(a) As part of the relief ordered in an administrative, arbitration or judicial proceeding, any supervisor, including any manager, department director, or other District official, who is found to have violated § 1-615.53 shall be subject to appropriate disciplinary action including dismissal. (b) As part of the relief ordered in a

proceeding, any supervisor who is found to have violated § 1-615.53 shall be subject to a civil fine not to exceed \$1000.”

Emergency legislation. — For temporary addition of subchapter, see note to § 1-616.51.

Legislative history of Law 12-160. — For legislative history of D.C. Law 12-160, see Historical and Statutory Notes following § 1-602.01.

Legislative history of Law 18-117. — For Law 18-117, see notes following § 1-615.52.

§ 1-615.56. Election of remedies.

(a) The institution of a civil action pursuant to § 1-615.54 shall preclude an employee from pursuing any administrative remedy for the same cause of action from the Office of Employee Appeals or from an arbitrator pursuant to a negotiated grievance and arbitration procedure or an employment contract.

(b) An employee may bring a civil action pursuant to § 1-615.54 if the aggrieved employee has had a final determination on the same cause of action from the Office of Employee Appeals or from an arbitrator pursuant to a negotiated grievance and arbitration procedure or an employment contract.

(c) Except as provided in subsections (a) and (b) of this section, nothing in this subchapter shall diminish the rights and remedies of an employee pursuant to any other federal or District law.

(Mar. 3, 1979, D.C. Law 2-139, § 1556, as added Oct. 7, 1998, D.C. Law 12-160, § 102(c), 45 DCR 5147; Apr. 12, 2000, D.C. Law 13-91, § 109(b), 47 DCR 520; Mar. 11, 2010, D.C. Law 18-117, § 2(e), 57 DCR 896.)

Prior Codifications. — 1981 Ed., § 1-616.16.

Effect of amendments. — D.C. Law 13-91

validated a previously made technical amendment in subsec. (c).

D.C. Law 18-117, in subsec. (b), substituted

"An employee may bring a civil action" for "No civil action shall be brought".

Emergency legislation. — For temporary addition of subchapter, see note to § 1-615.51.

Legislative history of Law 12-160. — For legislative history of D.C. Law 12-160, see His-

torical and Statutory Notes following § 1-602.01.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-602.03.

Legislative history of Law 18-117. — For Law 18-117, see notes following § 1-615.52.

§ 1-615.57. Posting of notice.

The District shall conspicuously display notices of employee protections and obligations under this subchapter in each personnel office and in other public places, and shall use all other appropriate means to keep all employees informed, including but not limited to the inclusion of annual notices of employee protections and obligations under this subchapter with employee tax reporting documents and in a letter provided to employees upon commencement of employment.

(Mar. 3, 1979, D.C. Law 2-139, § 1557, as added Oct. 7, 1998, D.C. Law 12-160, § 102(c), 45 DCR 5147; Apr. 12, 2000, D.C. Law 13-91, § 109(c), 47 DCR 520; Mar. 11, 2010, D.C. Law 18-117, § 2(f), 57 DCR 896.)

Prior Codifications. — 1981 Ed., § 1-616.17.

Effect of amendments. — D.C. Law 13-91 validated a previously made technical amendment.

D.C. Law 18-117 substituted "reporting documents and in a letter provided to employees upon commencement of employment" for "reporting documents".

Emergency legislation. — For temporary addition of subchapter, see note to § 1-615.51.

Legislative history of Law 12-160. — For legislative history of D.C. Law 12-160, see Historical and Statutory Notes following § 1-602.01.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-602.03.

Legislative history of Law 18-117. — For Law 18-117, see notes following § 1-615.52.

§ 1-615.58. Employee responsibilities.

Employees shall have the following rights and responsibilities:

(1) The right to freely express their opinions on all public issues, including those related to the duties they are assigned to perform; provided, however, that any agency may promulgate reasonable rules and regulations requiring that any such opinions be clearly disassociated from that agency's policy;

(2) The right to disclose information unlawfully suppressed, information concerning illegal or unethical conduct which threatens or which is likely to threaten public health or safety or which involves the unlawful appropriation or use of public funds, and information which would tend to impeach the testimony of employees of the District government before committees of the Council or the responses of employees to inquiries from members of the Council concerning the implementation of programs, information which would involve expenditure of public funds, and the protection of the constitutional rights of citizens and the rights of government employees under this chapter and under any other laws, rules, or regulations for the protection of the rights of employees; provided, however, that nothing in this section shall be construed to permit the disclosure of the contents of personnel files, personal medical reports, or any other information in a manner to invade the individual privacy

of an employee or citizen of the United States except as otherwise provided in this chapter;

(3) The right to communicate freely and openly with members of the Council and to respond fully and with candor to inquiries from committees of the Council, and from members of the Council; provided, however, that nothing in this section shall be construed to permit the invasion of the individual privacy of other employees or of citizens of the United States;

(4) The right to assemble in public places for the free discussion of matters of interest to themselves and to the public and the right to notify, on their own time, fellow employees and the public of these meetings;

(5) The right to humane, dignified, and reasonable conditions of employment, which allow for personal growth and self-fulfillment, and for the unhindered discharge of job responsibilities;

(6) The right to individual privacy; provided, however, that nothing in this section shall limit in any manner an employee's access to his or her own personnel file, medical report file, or any other file or document concerning his or her status or performance within his or her agency, except as otherwise provided in subchapter XXXI;

(7) Each employee of the District government shall make all protected disclosures concerning any violation of law, rule, or regulation, contract, misuse of government resources or other disclosure enumerated in § 1-615.52(a)(6), as soon as the employee becomes aware of the violation or misuse of resources;

(8) Each supervisor employed by the District government shall make all protected disclosures involving any violation of law, rule, regulation or contract pursuant to § 1-615.52(a)(6)(D) as soon as the supervisor becomes aware of the violation;

(9) The failure of a supervisor to make protected disclosures pursuant to § 1-615.52(a)(6)(D) shall be a basis for disciplinary action including dismissal;

(10) Upon receipt of an adjudicative finding that a protected activity was a contributing factor in an alleged prohibited personnel action, the appropriate agency head shall immediately institute disciplinary action against the offending supervisor; and

(11) Disciplinary action taken pursuant to this section shall follow the procedures of subchapter XVI-A, where applicable.

(Mar. 3, 1979, D.C. Law 2-139, § 1558, as added Oct. 7, 1998, D.C. Law 12-160, § 102(c), 45 DCR 5147; Apr. 12, 2000, D.C. Law 13-91, § 109(d), 47 DCR 520.)

Prior Codifications. — 1981 Ed., § 1-616.18.

Effect of amendments. — D.C. Law 13-91, in subd. (11), substituted "subchapter XVII-A" for "§ 617.1".

Emergency legislation. — For temporary addition of subchapter, see note to § 1-615.51.

Legislative history of Law 12-160. — For legislative history of D.C. Law 12-160, see Historical and Statutory Notes following § 1-602.01.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-602.03.

CASE NOTES

Immunity.

Former employee of District of Columbia Office of Unified Communications (OUC) could not sue her former supervisor individually for

alleged violations of District of Columbia Whistleblower Protection Act (WPA). *Jones v. Quintana*, 658 F.Supp.2d 183, 2009 U.S. Dist. LEXIS 90238 (2009).

§ 1-615.58a. Salary restriction for interfering with Council whistleblowers.

District funds shall not be available for the payment of the salary of any officer or employee of the District who:

(1) Prohibits or prevents, or attempts or threatens to prohibit or prevent, any other officer or employee of the District from having any direct oral or written communication or contact with any member, committee, or subcommittee of the Council in connection with any matter pertaining to the employment of the other officer or employee or pertaining to the department or agency of the other officer or employee in any way, irrespective of whether the communication or contact is at the initiative of the other officer or employee or in response to the request or inquiry of the member, committee, or subcommittee, of the Council except where the communication or contact would be unlawful; or

(2) Removes; suspends from duty without pay; demotes; reduces in rank, seniority, status, pay, or performance rating; denies promotion to; relocates; reassigns; transfers; disciplines; or discriminates in regard to any employment right, entitlement, or benefit, or any term or condition of employment, of any other officer or employee of the District, or attempts or threatens to commit any of the foregoing actions with respect to the other officer or employee, by reason of any communication or contact of the other officer or employee with any member, committee, or subcommittee of the Council as described in paragraph (1) of this section.

(Mar. 3, 1979, D.C. Law 2-139, § 1558a, as added Mar. 11, 2010, D.C. Law 18-117, § 2(g), 57 DCR 896.)

Legislative history of Law 18-117. — For Law 18-117, see notes following § 1-615.52.

§ 1-615.59. Applicability.

This subchapter shall apply to actions taken after July 13, 1998.

(Mar. 3, 1979, D.C. Law 2-139, § 1559, as added Oct. 7, 1998, D.C. Law 12-160, § 102(c), 45 DCR 5147.)

Prior Codifications. — 1981 Ed., § 1-616.19.

Emergency legislation. — For temporary addition of subchapter, see note to § 1-615.51.

Legislative history of Law 12-160. — For legislative history of D.C. Law 12-160, see Historical and Statutory Notes following § 1-602.01.

*Subchapter XVI. Adverse Actions; Grievances.***§ 1-616.01. Adverse actions. [Repealed].**

Repealed.

(Mar. 3, 1979, D.C. Law 2-139, § 1601, 25 DCR 5740; Sept. 26, 1980, D.C. Law 3-109, § 4(a), 27 DCR 3785; Sept. 5, 1985, D.C. Law 6-19, § 14(a), 32 DCR 3590; Feb. 24, 1987, D.C. Law 6-177, § 3(t), 33 DCR 7241; Mar. 24, 1990, D.C. Law 8-98, § 2, 37 DCR 1058; May 15, 1990, D.C. Law 8-128, § 2(a), 37 DCR 2099; Aug. 1, 1996, D.C. Law 11-152, § 302(s), 43 DCR 2978; June 10, 1998, D.C. Law 12-124, § 101(r), 45 DCR 2464.)

Cross references. — Office of police complaints, authority, complaint processing procedures, see § 5-1107.

Office of police complaints, referral to the United States Attorney, see § 5-1109.

Procurement, criteria for Council review of multiyear contracts and contracts in excess of \$1 million, see § 2-301.05a.

Prior Codifications. — 1981 Ed., § 1-617.1.

1973 Ed., § 1-346.1.

Emergency legislation. — For temporary amendment of § 401 of the Omnibus Personnel Reform Amendment Act of 1998 (D.C. Law

12-124), see § 2 of the Personnel Reform Technical Amendment Emergency Act of 1998 (D.C. Act 12-520, December 4, 1998, 45 DCR 9049).

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Editor's notes. — Applicability of § 101(r) of D.C. Law 12-124: Section 401(c) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(h), (l), (m), (n), (o)(2) through (5), (q), (r), (t), (u), (w), and (y) of the act shall apply as of October 21, 1998.

§ 1-616.02. Grievances. [Repealed].

Repealed.

(Mar. 3, 1979, D.C. Law 2-139, § 1602, 25 DCR 5740; Feb. 24, 1987, D.C. Law 6-177, § 3(u), 33 DCR 7241; May 15, 1990, D.C. Law 8-128, § 2(b), 37 DCR 2099; Aug. 1, 1996, D.C. Law 11-152, § 302(t), 43 DCR 2978; June 10, 1998, D.C. Law 12-124, § 101(r), 45 DCR 2464.)

Prior Codifications. — 1981 Ed., § 1-617.2.

1973 Ed., § 1-346.2.

See Historical and Statutory Notes following § 1-603.01.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Editor's notes. — Applicability of § 101(r) of D.C. Law 12-124: Section 401(c) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(h), (l), (m), (n), (o)(2) through (5), (q), (r), (t), (u), (w), and (y) of the act shall apply as of October 21, 1998. See note to § 1-616.01.

§ 1-616.03. Procedures and appeals. [Repealed].

Repealed.

(Mar. 3, 1979, D.C. Law 2-139, § 1603, 25 DCR 5740; May 15, 1990, D.C. Law 8-128, § 2(c), 37 DCR 2099; June 10, 1998, D.C. Law 12-124, § 101(r), 45 DCR 2464.)

Prior Codifications. — 1981 Ed., § 1-617.3.

1973 Ed., § 1-346.3.

Emergency legislation. — See Historical and Statutory Notes following § 1-616.01.

See Historical and Statutory Notes following § 1-603.01.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Editor's notes. — Applicability of § 101(r) of D.C. Law 12-124: See Historical and Statutory Notes following § 1-616.01.

Applicability of § 101(r) of D.C. Law 12-124: Section 401(c) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(h), (l), (m), (n), (o)(2) through (5), (q), (r), (t), (u), (w), and (y) of the act shall apply as of October 21, 1998.

Subchapter XVI-A. General Discipline and Grievances.

§ 1-616.51. Policy.

The District of Columbia government finds that a radical redesign of the adverse and corrective action system by replacing it with more positive approaches toward employee discipline is critical to achieving organizational effectiveness. To that end, the Mayor, the District of Columbia Board of Education, and the Board of Trustees of the University of the District of Columbia shall issue rules and regulations to establish a disciplinary system that includes:

- (1) A provision that disciplinary actions may only be taken for cause;
- (2) A definition of the causes for which a disciplinary action may be taken;
- (3) Prior written notice of the grounds on which the action is proposed to be taken;

(4) Except as provided in paragraph (5) of this section, a written opportunity to be heard before the action becomes effective, unless the agency head finds that taking action prior to the exercise of such opportunity is necessary to protect the integrity of government operations, in which case an opportunity to be heard shall be afforded within a reasonable time after the action becomes effective; and

(5) An opportunity to be heard within a reasonable time after the action becomes effective when the agency head finds that taking action is necessary because the employee's conduct threatens the integrity of government operations; constitutes an immediate hazard to the agency, to other District employees, or to the employee; or is detrimental to the public health, safety or welfare.

(Mar. 3, 1979, D.C. Law 2-139, § 1651, as added June 10, 1998, D.C. Law 12-124, § 101(s), 45 DCR 2464.)

Prior Codifications. — 1981 Ed., § 1-617.51.

Temporary Addition of Section. — Section 2 of D.C. Law 19-6 added a section to read as follows:

"Sec. 2. Report on reinstatement of separated employees.

"(a) Within 120 days of the effective date of the Reinstated Government Employee Review Emergency Act of 2011, passed on emergency

basis on February 15, 2011 (Enrolled version of Bill 19-112), the Mayor shall review the status of all separated District employees, since January 3, 2007, who have in their favor a current employee appeal decision for reinstatement to service by a statutorily recognized entity, including the Public Employee Relations Board, the Office of Employee Appeals, the Office of Administrative Hearings, and the courts of the District of Columbia.

“(b) After the review in subsection (a) of this section is completed, the Mayor shall have 45 days to issue a report to the Council on the status of each decision for reinstatement to service described in subsection (a) of this section, and the District’s plan for each employee who is to be reinstated.”

Section 4(b) of D.C. Law 19-6 provided that the act shall expire after 225 days of its having taken effect

Emergency legislation. — For temporary (90 day) addition of section, see § 2 of Reinstated Government Employee Review Emergency Act of 2011 (D.C. Act 19-27, March 1, 2011, 58 DCR 2585).

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Construction of Law 12-124. — Section 301 of D.C. Law 12-124 provided that nothing in the act shall be construed as superseding the provisions of the National Capital Revitalization and Self-Government Improvement Act of

1997, approved August 5, 1997 (Public Law 105-33; 111 Stat. 712), except that § 47-395.04(b)(3) is expressly superseded. Further, nothing in the act shall be construed as superseding the provisions of § 47-391.01 et seq. or of § 164 of the District of Columbia Appropriations Act, 1998, approved November 19, 1997 (Public Law 105-100; 111 Stat. 2160).

Editor’s notes. — Applicability of § 101(s) of D.C. Law 12-124: Section 401(a) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(d), (k), (p), (s), and (x) of the act shall apply upon the enactment of legislation by the United States Congress that states the following: “Notwithstanding any other law, section 101(d), (k), (p), (s), and (x) of the Omnibus Personnel Reform Act of 1998, adopted by the Council of the District of Columbia is enacted into law.” Section 134 of Title I of Division C of Pub. L. 105-277, 112 Stat. 2681-596, provided that “Notwithstanding any other law, sections 101(d), (k), (p), (s), and (x) of the Omnibus Personnel Reform Amendment Act of 1998, D.C. Law 12-124, effective June 11, 1998, are enacted into law.”

CASE NOTES

ANALYSIS

Construction with federal law.
Due process.
Qualified immunity.

Construction with federal law.

Provision in Metropolitan Police Personnel Amendment Act, stating that, for members of metropolitan police department, and notwithstanding any other law or regulation, assistant and deputy chiefs of police and inspectors shall be returned to rank of captain when mayor so determines, overrode conflicting provision in Comprehensive Merit Personnel Act (CMPA), and provided mayor or his delegee with explicit discretionary authority to return commanders to rank of captain; plain language in act indicated it applied to certain high ranking career service employees of police department, and it would have been illogical to provide mayor or his delegee with authority to return assistant chiefs and inspectors, the ranks immediately above and below commanders, to rank of captain, but not to grant same authority with respect to commanders. *Burton v. Office of Empl. Appeals*, 30 A.3d 789, 2011 D.C. App. LEXIS 616 (2011).

Due process.

District of Columbia Comprehensive Merit Protection Act creates a property interest in employment that is protected by due process for

employees governed by it. *Sanders v. District of Columbia*, 522 F.Supp.2d 83, 2007 U.S. Dist. LEXIS 82714 (2007), appeal dismissed by 2008 U.S. App. LEXIS 9125 (D.C. Cir. Mar. 12, 2008).

District of Columbia employees failed to allege and identify the specific process that the District allegedly failed to afford each of them in either terminating them or denying their request for disability or workers’ compensation benefits associated with their employment, as required to state a §§ 1983 claim for a violation of the procedural due process afforded under the District of Columbia Comprehensive Merit Protection Act (CMPA). *McManus v. District of Columbia*, 530 F.Supp.2d 46, 2007 U.S. Dist. LEXIS 94797 (2007).

District of Columbia Comprehensive Merit Protection Act (CMPA) creates a due process property interest for employees governed by it. *McManus v. District of Columbia*, 530 F.Supp.2d 46, 2007 U.S. Dist. LEXIS 94797 (2007).

Qualified immunity.

Police chief and officers were not entitled to qualified immunity on claim that they violated police sergeant’s procedural due process rights by conducting investigation of him without providing him with notice of an opportunity to be heard. *Sanders v. District of Columbia*, 522 F.Supp.2d 83, 2007 U.S. Dist. LEXIS 82714 (2007), appeal dismissed by 2008 U.S. App. LEXIS 9125 (D.C. Cir. Mar. 12, 2008).

§ 1-616.52. Disciplinary grievances and appeals.

(a) An official reprimand or a suspension of less than 10 days may be contested as a grievance pursuant to § 1-616.53 except that the grievance must be filed within 10 days of receipt of the final decision on the reprimand or suspension.

(b) An appeal from a removal, a reduction in grade, or suspension of 10 days or more may be made to the Office of Employee Appeals. When, upon appeal, the action or decision by an agency is found to be unwarranted by the Office of Employee Appeals, the corrective or remedial action directed by the Office of Employee Appeals shall be taken in accordance with the provisions of subchapter VI of this chapter within 30 days of the OEA decision.

(c) A grievance pursuant to subsection (a) of this section or an appeal pursuant to subsection (b) of this section shall not serve to delay the effective date of a decision by the agency.

(d) Any system of grievance resolution or review of adverse actions negotiated between the District and a labor organization shall take precedence over the procedures of this subchapter for employees in a bargaining unit represented by a labor organization. If an employee does not pay dues or a service fee to the labor organization, he or she shall pay all reasonable costs to the labor organization incurred in representing such employee.

(e) Matters covered under this subchapter that also fall within the coverage of a negotiated grievance procedure may, in the discretion of the aggrieved employee, be raised either pursuant to § 1-606.03, or the negotiated grievance procedure, but not both.

(f) An employee shall be deemed to have exercised their option pursuant to subsection (e) of this section to raise a matter either under the applicable statutory procedures or under the negotiated grievance procedure at such time as the employee timely files an appeal under this section or timely files a grievance in writing in accordance with the provision of the negotiated grievance procedure applicable to the parties, whichever event occurs first.

(Mar. 3, 1979, D.C. Law 2-139, § 1652, as added June 10, 1998, D.C. Law 12-124, § 101(s), 45 DCR 2464; Apr. 12, 2000, D.C. Law 13-91, § 108(b), 47 DCR 520.)

Prior Codifications. — 1981 Ed., § 1-617.52.

1981 Ed., § 1-617.52.

Effect of amendments. — D.C. Law 13-91 validated previously made technical amendments in subsecs. (d) and (e).

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see His-

torical and Statutory Notes following § 1-603.01.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-602.03.

Editor's notes. — Applicability of § 101(s) of D.C. Law 12-124: See Historical and Statutory Notes following § 1-616.51.

CASE NOTES

ANALYSIS

Authority of agency.
Damages.

Due process.
Exhaustion of administrative remedies.
In general.
Pleadings.

Authority of agency.

District Public Employee Relations Board (PERB) was authorized to determine whether union or District committed unfair labor practice by failing to arbitrate former District correctional officer's grievance regarding her removal and was authorized to fashion remedy, and thus, employee's exhaustion of administrative remedies by completing arbitration and seeking PERB review would not have been futile. *Johnson v. District of Columbia*, 552 F.3d 806, 2008 U.S. App. LEXIS 25855 (C.A.D.C. 2008).

Office of Employee Appeals (OEA) is not jurisdictionally barred from considering a public employee's claim that his termination violated the express terms of the applicable collective bargaining agreement (CBA); an aggrieved employee may challenge an adverse employment decision either by using grievance procedures that are contained in employee's CBA or by pursuing remedy under appeal process contained in the Comprehensive Merit Personnel Act (CMPA), with one choice leading to review of the final employment decision by the Court of Appeals, and the other leading to a submission of the final OEA decision to binding arbitration, if the negotiated grievance procedure so provides. *Brown v. D.C. Dep't of Corr.*, 993 A.2d 529, 2010 D.C. App. LEXIS 203 (2010).

Damages.

Mere demand for punitive damages eliminates the need for an employee to exhaust his or her remedies under the District of Columbia Comprehensive Merit Personnel Act (CMPA). *Payne v. District of Columbia*, 592 F.Supp.2d 29, 2008 U.S. Dist. LEXIS 104901 (2008).

Due process.

District of Columbia employees failed to allege and identify the specific process that the District allegedly failed to afford each of them in either terminating them or denying their request for disability or workers' compensation benefits associated with their employment, as required to state a §§ 1983 claim for a violation of the procedural due process afforded under the District of Columbia Comprehensive Merit Protection Act (CMPA). *McManus v. District of Columbia*, 530 F.Supp.2d 46, 2007 U.S. Dist. LEXIS 94797 (2007).

District of Columbia Comprehensive Merit Protection Act (CMPA) creates a due process property interest for employees governed by it. *McManus v. District of Columbia*, 530 F.Supp.2d 46, 2007 U.S. Dist. LEXIS 94797 (2007).

Exhaustion of administrative remedies.

Under the District Comprehensive Merit Personnel Act (CMPA), an employee who pursues a grievance pursuant to a collective bar-

gaining agreement (CBA) procedure, rather than appealing to the Office of Employee Appeals (OEA), must complete the prescribed grievance procedure and therefore must file an unfair labor practice, if necessary, to compel arbitration subject to appeal to the District Public Employee Relations Board (PERB), and only then may pursue judicial review. *Johnson v. District of Columbia*, 552 F.3d 806, 2008 U.S. App. LEXIS 25855 (C.A.D.C. 2008).

Former District of Columbia correctional officer's election to pursue collective bargaining agreement (CBA) grievance procedure regarding her removal, instead of statutory appeal process to Office of Employee Appeals (OEA), required her to exhaust administrative remedies by completing arbitration and, if necessary, appealing to District Public Employee Relations Board (PERB) by filing unfair labor practice complaint, pursuant to requirements of CBA and District Comprehensive Merit Personnel Act (CMPA), due to District's refusal to arbitrate and union's failure to pursue arbitration, rather than circumventing arbitration and PERB review by filing lawsuit seeking judicial review. *Johnson v. District of Columbia*, 552 F.3d 806, 2008 U.S. App. LEXIS 25855 (C.A.D.C. 2008).

The District of Columbia's exhaustion doctrine is jurisdictional, as applied by the District of Columbia Court of Appeals, and requires that an employee exhaust the administrative remedies prescribed in either the District Comprehensive Merit Personnel Act (CMPA) or a collective bargaining agreement (CBA) before obtaining judicial review in the Superior Court. *Johnson v. District of Columbia*, 552 F.3d 806, 2008 U.S. App. LEXIS 25855 (C.A.D.C. 2008).

District of Columbia detective failed to exhaust her administrative remedies for her action that alleged suspending her for seeking a temporary protective order against two other officers violated §§ 1981, where detective failed to appeal her suspension to the Office of Employee Appeals under the District of Columbia Comprehensive Merit Personnel Act (CMPA). *Bonaccorsy v. District of Columbia*, 685 F.Supp.2d 18, 2010 U.S. Dist. LEXIS 12636 (2010).

Former District of Columbia elevator inspector's claim that District and his supervisors conspired to interfere with his employment relations by agreement to attempt to force him to quit or to fire him and to damage his professional and personal reputation by maliciously spreading false information to interfere with his prospective employment opportunities was precluded, on grounds that employee failed to exhaust administrative remedies, under District of Columbia Comprehensive Merit Personnel Act (CMPA), since employee failed to respond to District's exhaustion argument, and

CMPA was intended to address all grievances or removal disputes between District and its employees. *Payne v. District of Columbia*, 592 F.Supp.2d 29, 2008 U.S. Dist. LEXIS 104901 (2008).

Former District of Columbia elevator inspector's claim that District breached express or implied contract by forcing him off payroll, terminating his employment, refusing to pay his wages through termination, and refusing to provide him with statutory notice of right to obtain other health insurance following termination was precluded, on grounds that employee failed to exhaust administrative remedies, under District of Columbia Comprehensive Merit Personnel Act (CMPA), since relief for breach of contract claim was available under CMPA which addressed virtually every conceivable personnel issue between District and its employees. *Payne v. District of Columbia*, 592 F.Supp.2d 29, 2008 U.S. Dist. LEXIS 104901 (2008).

Exhaustion under the District of Columbia Comprehensive Merit Personnel Act (CMPA) is treated as a jurisdictional requirement by District of Columbia courts. *Payne v. District of Columbia*, 592 F.Supp.2d 29, 2008 U.S. Dist. LEXIS 104901 (2008).

In general.

High ranking police officer who was demoted from rank of commander to captain was required to exhaust administrative remedies provided by District of Columbia's Comprehensive Merit Personnel Act (CMPA) prior to bringing §§ 1983 action against District of Columbia and police chief, alleging that he was deprived of his Fifth Amendment property interest in his employment at the rank of commander without due process of law; although officer had appealed demotion to Office of Employee Appeals (OEA) and had prevailed before OEA hearing officer, there was no final decision on police department's appeal from hearing officer's decision. *Hoey v. District of Columbia*, 540 F.Supp.2d 218, 2008 U.S. Dist. LEXIS 26328 (2008).

High ranking police officer who was demoted from rank of commander to captain was required to exhaust administrative remedies provided by District of Columbia's Comprehensive Merit Personnel Act (CMPA) prior to bringing defamation plus and emotional distress claims against police chief and District of Columbia officials, since these claims were based on statements made by police chief and District officials concerning the supposed reasons for his demotion, and thus they concerned an adverse action taken against the officer. *Hoey v. District of Columbia*, 540 F.Supp.2d 218, 2008 U.S. Dist. LEXIS 26328 (2008).

To the extent that District of Columbia employees' claims against District and labor unions substantively challenged their alleged terminations or the denial of their workers' compensation claims, such claims could only be asserted via mechanisms provided by District of Columbia Comprehensive Merit Protection Act (CMPA) before Public Employee Relations Board (PERB), and not in an action before district court. *McManus v. District of Columbia*, 530 F.Supp.2d 46, 2007 U.S. Dist. LEXIS 94797 (2007).

For purposes of determining whether he had due process property interest in his Commander position, District of Columbia Metropolitan Police Department (MPD) officer's status did not change from Career Service employee to "at-will" employee when he was promoted directly to that position from Captain. *Fonville v. District of Columbia*, 448 F.Supp.2d 21, 2006 U.S. Dist. LEXIS 58564 (2006).

Supervisor in the District of Columbia Office of the Corporation Counsel was not entitled to reversal merely because the trial judge did not grant his timely (if last-minute) request for a one-day extension of the filing deadline, and even if that was a mistake, it ultimately was of no consequence, for the propriety of granting the District of Columbia's motion to dismiss supervisor's Comprehensive Merit Personnel Act (CMPA) action turned on questions of law as to which appellate court's review was de novo, and appellate court was able to consider all of supervisor's arguments (and proffered evidence) bearing on those questions. *Grant v. District of Columbia*, 908 A.2d 1173, 2006 D.C. App. LEXIS 543 (2006).

Pleadings.

Former District of Columbia elevator inspector's claims that District and his supervisors defamed him, tortiously interfered with his prospective advantage, and wrongfully discharged him by maliciously making false statements that he was incompetent, in retaliation for his protected whistle-blowing activity of protesting about lax enforcement of elevator inspection regulations, were precluded, on grounds that employee failed to exhaust administrative remedies, under District of Columbia Comprehensive Merit Personnel Act (CMPA), despite employee's request for punitive damages, where employee offered no reasoned basis to find that relief available under CMPA was insufficient to "right the wrong" by alleging extraordinary circumstances required for punitive damages. *Payne v. District of Columbia*, 592 F.Supp.2d 29, 2008 U.S. Dist. LEXIS 104901 (2008).

§ 1-616.53. Grievances.

(a) The Mayor, the District of Columbia Board of Education, and the Board of Trustees of the University of the District of Columbia shall issue rules and regulations providing procedures for the prompt handling of grievances of employees and applicants for employment. The grievance system shall be made known to all employees and shall provide for an alternative dispute resolution mechanism. The grievance system shall provide for the expeditious adjustment of grievances and complaints.

(b) Except when an employee is grieving a disciplinary action pursuant to § 1-616.52, no employee or applicant shall present a grievance pursuant to this section more than 45 days, not including Saturdays, Sundays, or legal holidays, after the date that the employee knew or should have known of the act or occurrence that is the subject of the grievance.

(Mar. 3, 1979, D.C. Law 2-139, § 1653, as added June 10, 1998, D.C. Law 12-124, § 101(s), 45 DCR 2464.)

Prior Codifications. — 1981 Ed., § 1-617.53.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Editor's notes. — Applicability of § 101(s) of D.C. Law 12-124: See Historical and Statutory Notes following § 1-616.51.

CASE NOTES

Due process.

Retired police officers who were first employed by District of Columbia before 1987 and were rehired by District after 2004 were not deprived of procedural due process when their paychecks were reduced by offset for pension payments, as they were provided notice of offset

months before it became effective and opportunity to challenge impending offset but neglected to avail themselves of dispute resolution procedures under Comprehensive Merit Protection Act (CMPA). *Cannon v. District of Columbia*, 2012 WL 2673097 (2012).

§ 1-616.54. Administrative leave; enforced leave.

(a) Notwithstanding any other provision of this subchapter, a personnel authority may authorize the placing of an employee on annual leave or leave without pay, as provided in this section, if:

(1) A determination has been made that the employee utilized fraud in securing his or her appointment or that he or she falsified official records;

(2) The employee has been indicted on, arrested for, or convicted of a felony charge (including conviction following a plea of *nolo contendere*); or

(3) The employee has been indicted on, arrested for, or convicted of any crime (including conviction following a plea of *nolo contendere*) that bears a relationship to his or her position; except that no such relationship need be established between the crime and the employee's position in the case of uniformed members of the Metropolitan Police Department or correctional officers in the D.C. Department of Corrections.

(b) Prior to placing an employee on enforced leave pursuant to this section, an employee shall initially be placed on administrative leave for a period of 5

work days, followed by enforced annual leave or, if no annual leave is available, leave without pay. The employee shall remain in this status until such time as an action in accordance with regulations issued pursuant to § 1-616.51, taken as a result of the event that caused this administrative action, is effected or a determination is made that no such action in accordance with regulations issued pursuant to § 1-616.51 will be taken.

(c) An employee to be placed on enforced leave shall be provided with a written notice proposing that action during the 5-day period of administrative leave. To ensure receipt within the 5-day period, the initial delivery of notice may be accomplished either in person or by reading the notice to the employee over the telephone prior to actual delivery of the written notice.

(d) A written notice issued pursuant to this section shall inform the employee of the following:

- (1) The reasons for the proposed enforced leave;
- (2) The beginning and ending dates of administrative leave;
- (3) The beginning date of the proposed enforced leave;
- (4) His or her right to respond, orally or in writing, or both, to the notice;

and

(5) His or her right to be represented by an attorney or other representative.

(e) Within the 5-day administrative leave period, the employee's explanation, if any, and statements of any witnesses shall be considered and a written decision shall be issued by the personnel authority.

(f) If a determination is made to place the employee on annual leave or leave without pay, the decision letter shall inform him or her of the placement on enforced leave, the date the leave is to commence, his or her right to grieve the action within 10 days of receipt of the written decision letter, and if the enforced leave lasts 10 or more days, his or her right to file an appeal with the Office of Employee Appeals within 30 days of the effective date of the appealed agency action.

(g) If the basis for placing an employee on enforced leave pursuant to this section does not result in the taking of a disciplinary action pursuant to § 1-616.52 (or, in the case of an incumbent of a statutory position, the employee is not disciplined or removed in accordance with the provisions of the statute establishing the position), any annual leave or pay lost as a result of this administrative action shall be restored retroactively.

(Mar. 3, 1979, D.C. Law 2-139, § 1654, as added June 10, 1998, D.C. Law 12-124, § 101(s), 45 DCR 2464; Apr. 20, 1999, D.C. Law 12-264, § 5(c), 46 DCR 2118; May 18, 2004, D.C. Law 15-162, § 2(b), 51 DCR 3628.)

Cross references. — Merit system, effective date provisions, see § 1-636.02.

Merit system, organization for personnel management, rules and regulations, see § 1-604.04.

Washington Convention Center Authority, application of this subchapter, see § 10-1202.16.

Prior Codifications. — 1981 Ed., § 1-617.54.

Effect of amendments. — D.C. Law 15-162 rewrote subsec. (f) which had read as follows: "(f) If a determination is made to place the employee on annual leave or leave without pay, the decision letter shall inform him or her of the placement on enforced leave, the date the leave

is to commence, and his or her right to grieve the action within 10 days of receipt of the written decision letter.”

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Legislative history of Law 12-264. — For legislative history of D.C. Law 12-264, see Historical and Statutory Notes following § 1-603.01.

Legislative history of Law 13-49. — Law 13-49, the “Criminal Code and Clarifying Technical Amendments Act of 1999,” was introduced in Council and assigned Bill No. 13-61, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on March 2, 1999, and April 13, 1999,

respectively. Signed by the Mayor on May 13, 1999, it was assigned Act No. 13-69 and transmitted to both Houses of Congress for its review. D.C. Law 13-49 became effective on October 19, 1999.

Legislative history of Law 15-162. — For Law 15-162, see notes following § 1-606.03.

Delegation of Authority. — Delegations and sub-delegations of authority—Director of Personnel, Chief of Police, and Agency Heads—Rescission of Mayor’s Orders 80-78, 92-114, 99-79 and Deletion of Part I of Mayor’s Order 97-88, see Mayor’s Order 2000-83, May 30, 2000 (47 DCR 4956).

Editor’s notes. — Applicability of § 101(s) of D.C. Law 12-124: See Historical and Statutory Notes following § 1-616.51.

CASE NOTES

In general.

While the Comprehensive Merit Personnel Act (CMPA) imposes limits on the authority to place an employee on annual leave or leave

without pay (so-called “enforced leave”), those limits do not apply to paid administrative leave. *Grant v. District of Columbia*, 908 A.2d 1173, 2006 D.C. App. LEXIS 543 (2006).

Subchapter XVII. Labor-Management Relations.

§ 1-617.01. Policy.

(a) The District of Columbia government finds and declares that an effective collective bargaining process is in the general public interest and will improve the morale of public employees and the quality of service to the public.

(b) Each employee of the District government has the right, freely and without fear of penalty or reprisal:

(1) To form, join, and assist a labor organization or to refrain from this activity;

(2) To engage in collective bargaining concerning terms and conditions of employment, as may be appropriate under this law and rules and regulations, through a duly designated majority representative; and

(3) To be protected in the exercise of these rights.

(c) The Mayor or appropriate personnel authority, including his or her or its duly designated representative(s), shall meet at reasonable times with exclusive representative(s) of bargaining unit employees to bargain collectively in good faith.

(d) Subsection (b) of this section does not authorize participation in the management of a labor organization or activity as a representative of such an organization by a supervisor, or management official or by an employee when the participation or activity would result in a conflict of interest or otherwise be incompatible with law or with the official duties of the employee. Supervisor means an employee having authority, in the interest of an agency, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to evaluate their

performance, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of authority is not of a merely routine or clerical nature, but requires the use of independent judgment. The definition of supervisor shall include an incumbent of a position which is classified at a level higher than it would have been had the incumbent not performed some or all of the above duties.

(Mar. 3, 1979, D.C. Law 2-139, § 1701, 25 DCR 5740; Oct. 1, 2002, D.C. Law 14-190, § 3832(a), 49 DCR 6968.)

Cross references. — Employee deferred compensation program, employee eligibility, treatment of benefits, authorization of program, see 47-3601.

Prior Codifications. — 1981 Ed., § 1-618.1.

1973 Ed., § 1-347.1.

Effect of amendments. — D.C. Law 14-190, in subsec. (c), substituted “representative(s) of bargaining unit employees” for “employee representatives”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 3732(a) of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see His-

torical and Statutory Notes following § 1-601.01.

Legislative history of Law 14-190. — For Law 14-190, see notes following § 1-301.131.

Short title. — Short title of subtitle B of title XXXVIII of Law 14-190: Section 3831 of D.C. Law 14-190 provided that subtitle B of title XXXVIII of the act may be cited as the Labor Relations Amendment Act of 2002.

Resolutions. — Resolution 16-347, the “Compensation Agreement Between the District of Columbia and Compensation Unit 33 Agency Counsel Approval Resolution of 2005”, was approved effective November 1, 2005.

Mayor’s Orders. — Establishment of Labor Liaisons: See Mayor’s Order 88-101, April 26, 1988.

§ 1-617.02. Labor-management relations program established; contents; impasse resolution.

(a) The Public Employee Relations Board (hereinafter in this subchapter referred to as the “Board”) shall issue rules and regulations establishing a labor-management relations program to implement the policy set forth in this subchapter.

(b) The labor-management relations program shall include:

(1) A system for the orderly resolution of questions concerning the recognition of majority representatives of employees;

(2) The resolution of unfair labor practice allegations;

(3) The protection of employee rights as set forth in § 1-617.06;

(4) The right of employees to participate through their duly-designated exclusive representative in collective bargaining concerning terms and conditions of employment as may be appropriate under this chapter and rules and regulations issued pursuant thereto;

(5) The scope of bargaining;

(6) The resolution of negotiation impasses concerning matters appropriate for collective bargaining; and

(7) Any other matters which affect employee-employer relations.

(c) Impasse resolution machinery may include, but need not be limited to, the following:

(1) Mediation;

(2) Fact-finding;

- (3) Advisory arbitration;
- (4) Request for injunction;
- (5) Binding arbitration;
- (6) Final best offer binding arbitration; and
- (7) Final best offer binding arbitration item by item on noncompensation matters.

(d) If, after a reasonable period of negotiation concerning the terms and conditions of employment to be incorporated in a collective bargaining agreement, further negotiation appears to be unproductive to the Board, an impasse shall be deemed to have occurred. Where deemed appropriate, impasse resolution procedures may be conducted by the Board, its staff or third parties chosen either by the Board or by the mutual concurrence of the parties to the dispute. Impasse resolution machinery may be invoked by either party or on application of the Board. The choice of the form(s) of impasse resolution machinery to be utilized in a particular instance shall be the prerogative of the Board, after appropriate consultation with the interested parties. In considering the appropriate award for each impasse item to be resolved, any third party shall consider at least the following criteria:

(1) Existing laws and rules and regulations which bear on the item in dispute;

(2) Ability of the District to comply with the terms of the award;

(3) The need to protect and maintain the public health, safety and welfare; and

(4) The need to maintain personnel policies that are fair, reasonable, and consistent with the objectives of this chapter.

(Mar. 3, 1979, D.C. Law 2-139, § 1702, 25 DCR 5740.)

Prior Codifications. — 1981 Ed., § 1-618.2.

1973 Ed., § 1-347.2.

Legislative history of Law 2-139. — For

legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

CASE NOTES

ANALYSIS

In general.
Jurisdiction.
Purpose.

In general.

Action by labor organization challenging results of interest arbitration under the Comprehensive Merit Personnel Act was improperly brought against neutral arbitrator and chairman of the Public Employee Relations Board. D.C. Code 1981, § 1-601.1 et seq. Council of School Officers v. Vaughn, 553 A.2d 1222, 1989 D.C. App. LEXIS 14 (1989).

The teachers have an interest not just in the total number of work days per school year, but also in which days they must be on duty. While the total number of days worked remains the

same with the school's changes, the timing of those work days does not. The changes impact on a legitimate, direct interest of the teachers in their basic work life and terms and conditions of employment under the Comprehensive Merit Personnel Act. Therefore, the subjects at issue fall within the scope of those items under the CMPA about which the school and the teachers must generally bargain. Washington Teachers' Union Local 6 v. District of Columbia, 115 WLR 1057 (Super. Ct.).

Jurisdiction.

Under Government Comprehensive Merit Personnel Act, District of Columbia courts do not have concurrent jurisdiction with Public Employee Relations Board. D.C. Code 1981, § 1-601.1 et seq. Hawkins v. Hall, 537 A.2d 571, 1988 D.C. App. LEXIS 39 (1988).

Public Employee Relations Board has primary jurisdiction to determine whether particular act or omission constitutes unfair labor practice under District of Columbia Government Comprehensive Merit Personnel Act. D.C. Code 1981, § 1-601.1 et seq. *Hawkins v. Hall*, 537 A.2d 571, 1988 D.C. App. LEXIS 39 (1988).

Personnel Act was intended to create a modern, flexible, and comprehensive system of public personnel administration in the District of Columbia government. D.C. Code 1981, § 1-601.1 et seq. *Council of School Officers v. Vaughn*, 553 A.2d 1222, 1989 D.C. App. LEXIS 14 (1989).

Purpose.

District of Columbia Comprehensive Merit

§ 1-617.03. Standards of conduct for labor organizations.

(a) Recognition shall be accorded only to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. A labor organization must certify to the Board that its operations mandate the following:

(1) The maintenance of democratic provisions for periodic elections to be conducted subject to recognized safeguards and provisions defining and securing the right of individual members to participate in the affairs of the organization, to fair and equal treatment under the governing rules of the organization, and to fair process in disciplinary proceedings;

(2) The exclusion from office in the organization of any person identified with corrupt influences;

(3) The prohibition of business or financial interests on the part of organization officers and agents which conflict with their duty to the organization and its members;

(4) Fair elections; and

(5) The maintenance of fiscal integrity in the conduct of the affairs of the organization, including provision for accounting and financial controls and regular financial reports or summaries to be made available to members.

(b) The Board may accept any of the following as evidence that a labor organization's operations meet the requirements of subsection (a) of this section:

(1) A statement in writing that the labor organization is a member of the American Federation of Labor-Congress of Industrial Organizations and is governed by and subscribes to the American Federation of Labor-Congress of Industrial Organizations Codes of Ethical Practice;

(2) A copy of the labor organization's constitution and bylaws which contain explicit provisions covering these standards;

(3) A copy of rules and regulations of the organization which have been officially adopted by the membership, which contain explicit provisions covering these standards; or

(4) An official certification in writing from a labor organization stating that the labor organization subscribes to the standards of conduct for labor organizations, as set forth in this section.

(c) The Board shall prescribe the rules and regulations needed to effect this section. Any complaint of a violation of this section shall be filed with the Board.

(Mar. 3, 1979, D.C. 2-139, § 1703, 25 DCR 5740.)

Prior Codifications. — 1981 Ed., § 1-618.3.

1973 Ed., § 1-347.3.

Legislative history of Law 2-139. — For

legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

CASE NOTES

ANALYSIS

Evidence.

In general.

Jurisdiction.

Evidence.

Substantial evidence supported findings of Public Employee Relations Board that union violated standard of conduct for labor organizations when it rescinded earlier decision to pay up to \$100 per hour for legal counsel retained by one of its members to represent him in criminal case. D.C. Code 1981, § 1-618.3(a)(1). *Fraternal Order of Police MPD Labor Committee v. Public Employee Relations Bd.*, 516 A.2d 501, 1986 D.C. App. LEXIS 460 (1986).

In general.

Union's requirement of exhaustion of internal union remedies would not be enforced, in view of unambiguously expressed intent of statute that complaint alleging standards of conduct violations be filed with Public Employee Relations Board. D.C. Code 1981, § 1-618.3(c).

Fraternal Order of Police MPD Labor Committee v. Public Employee Relations Bd., 516 A.2d 501, 1986 D.C. App. LEXIS 460 (1986).

Statute and regulations promulgated by Public Employee Relation Board empowered Board to review complaints alleging failure of recognized labor organization to comply with standards of conduct for labor organizations. D.C. Code 1981, §§ 1-605.2(9), 1-618.3(c). *Fraternal Order of Police MPD Labor Committee v. Public Employee Relations Bd.*, 516 A.2d 501, 1986 D.C. App. LEXIS 460 (1986).

Jurisdiction.

Union's actions with respect to terminated employee's appeal of his grievance, whether union offered employee assistance within its collective bargaining agreement or outside it, was a claim for violation of union's standards of conduct, and such a complaint alleging standard of conduct was violated was within exclusive jurisdiction of Public Employee Relations Board (PERB). D.C. Code 1981, § 1-618.3. *Cooper v. AFSCME, Local 1033*, 656 A.2d 1141, 1995 D.C. App. LEXIS 71 (1995).

§ 1-617.04. Unfair labor practices.

(a) The District, its agents, and representatives are prohibited from:

(1) Interfering with, restraining, or coercing any employee in the exercise of the rights guaranteed by this subchapter;

(2) Dominating, interfering, or assisting in the formation, existence or administration of any labor organization, or contributing financial or other support to it, except that the District may permit employees to negotiate or confer with it during working hours without loss of time or pay;

(3) Discriminating in regard to hiring or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization, except as otherwise provided in this chapter;

(4) Discharging or otherwise taking reprisal against an employee because he or she has signed or filed an affidavit, petition, or complaint or given any information or testimony under this subchapter; or

(5) Refusing to bargain collectively in good faith with the exclusive representative.

(b) Employees, labor organizations, their agents, or representatives are prohibited from:

(1) Interfering with, restraining, or coercing any employees or the District in the exercise of rights guaranteed by this subchapter;

(2) Causing or attempting to cause the District to discriminate against an employee in violation of § 1-617.06;

(3) Refusing to bargain collectively in good faith with the District if it has been designated in accordance with this chapter as the exclusive representative of employees in an appropriate unit;

(4) Engaging in a strike, or any other form of unauthorized work stoppage or slowdown, or in the case of a labor organization, its agents, or representatives condoning any such activity by failing to take affirmative action to prevent or stop it; and

(5) Engaging in a strike or refusal to handle goods or perform services, or threatening, coercing or restraining any person with the object of forcing or requiring any person to cease, delay, or stop doing business with any other person or to force or to require an employer to recognize for recognition purposes a labor organization not recognized pursuant to the procedures set forth in § 1-617.06.

(Mar. 3, 1979, D.C. Law 2-139, § 1704, 25 DCR 5740; Sept. 18, 1998, D.C. Law 12-151, § 2(c), 45 DCR 4043; Oct. 1, 2002, D.C. Law 14-190, § 3832(b), 49 DCR 6968.)

Prior Codifications. — 1981 Ed., § 1-618.4.

1973 Ed., § 1-347.4.

Effect of amendments. — D.C. Law 14-190, in subsec. (a)(1), inserted “with” after “Interfering”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 3732(b) of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 12-151. — For legislative history of D.C. Law 12-151, see Historical and Statutory Notes following § 1-605.02.

Legislative history of Law 14-190. — For Law 14-190, see notes following § 1-301.131.

CASE NOTES

ANALYSIS

Complaints.

In general.
Jurisdiction.

Complaints.

Former employee’s unfair labor practice complaint, arising from her dismissal from Department of Human Services, accrued on date on which employee received the final notice of her dismissal, regardless of whether notice of her right to file a complaint with the Public Employee Relations Board (PERB) accompanied that notice. *Gibson v. D.C. Pub. Empl. Rels. Bd.*, 785 A.2d 1238, 2001 D.C. App. LEXIS 246 (2001).

In general.

The Comprehensive Merit Personnel Act (CMPA) prohibits refusals to bargain in good faith. *Doctors Council of the Dist. of Columbia Gen. Hosp. v. D.C. Pub. Empl. Rels. Bd.*, 914 A.2d 682, 2007 D.C. App. LEXIS 3 (2007).

In order for there to be a discrimination in regard to tenure or other conditions of employ-

ment to discourage union membership under the Comprehensive Merit Personnel Act (CMPA), there must be both discrimination and a resulting discouragement of union membership. *Doctors Council of the Dist. of Columbia Gen. Hosp. v. D.C. Pub. Empl. Rels. Bd.*, 914 A.2d 682, 2007 D.C. App. LEXIS 3 (2007).

In an appeal of a Public Employee Relations Board (PERB) decision, on legal issues the District of Columbia Court of Appeals defers to the PERB’s interpretation of the Comprehensive Merit Personnel Act’s (CMPA) unfair labor practices provisions and will not reverse unless the interpretation is unreasonable in light of the prevailing law or inconsistent with the statute. *Doctors Council of the Dist. of Columbia Gen. Hosp. v. D.C. Pub. Empl. Rels. Bd.*, 914 A.2d 682, 2007 D.C. App. LEXIS 3 (2007).

Former employee’s claim that Department of Human Services committed an unfair labor practice when it ordered her dismissal was not within the purview of statute regarding grievance system regulations; statute expressly exempted adverse actions resulting in removals from its purview. *Gibson v. D.C. Pub. Empl.*

Rels. Bd., 785 A.2d 1238, 2001 D.C. App. LEXIS 246 (2001).

Jurisdiction.

District of Columbia employees' claim that labor union defendants breached duties of fair representation to employees fell within District of Columbia Comprehensive Merit Protection Act (CMPA) as an unfair labor practice, and thus Public Employee Relations Board (PERB), rather than district court, had jurisdiction to entertain the suit. *McManus v. District of Columbia*, 530 F.Supp.2d 46, 2007 U.S. Dist. LEXIS 94797 (2007).

Only Public Employees Relations Board (PERB) had jurisdiction over claims of retaliation.

D.C. Code 1981, § 1-618.4(a)(4). Office of the D.C. Controller v. Frost, 638 A.2d 657, 1994 D.C. App. LEXIS 39 (1994).

Under Government Comprehensive Merit Personnel Act, District of Columbia courts do not have concurrent jurisdiction with Public Employee Relations Board. D.C. Code 1981, § 1-601.1 et seq. *Hawkins v. Hall*, 537 A.2d 571, 1988 D.C. App. LEXIS 39 (1988).

Public Employee Relations Board has primary jurisdiction to determine whether particular act or omission constitutes unfair labor practice under District of Columbia Government Comprehensive Merit Personnel Act. D.C. Code 1981, § 1-601.1 et seq. *Hawkins v. Hall*, 537 A.2d 571, 1988 D.C. App. LEXIS 39 (1988).

§ 1-617.05. Strikes prohibited.

It shall be unlawful for any District government employee or labor organization to participate in, authorize, or ratify a strike against the District.

(Mar. 3, 1979, D.C. Law 2-139, § 1705, 25 DCR 5740.)

Prior Codifications. — 1981 Ed., § 1-618.5.

1973 Ed., § 1-347.5.

Legislative history of Law 2-139. — For

legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

CASE NOTES

ANALYSIS

Findings.

In general.

Unclean hands.

Findings.

Findings by trial court that if there was a strike by school district employees five high schools attended by 5700 children would probably would close, that 1500 special needs children who attended 109 schools in adjacent states would be deprived of normal transportation, that there was a real danger that 5000 teachers would refuse to cross the picket line resulting in widespread disruption of efforts to keep schools open, that children who normally received two meals at school would be deprived of a regular source of food, and that any school children of working parents probably would be out in the community without adult supervision, was sufficient to support trial court's determination that threatened strike by school employees would result in irreparable injury, in action by superintendent of school district and District of Columbia seeking an injunction against the strike. *Feaster v. Vance*, 832 A.2d 1277, 2003 D.C. App. LEXIS 566 (2003).

In general.

Threatened strike by employees of school district was not an unfair labor practice such

that Public Employee Relations Board was vested with primary jurisdiction over attempt by superintendent of school district and District of Columbia to prohibit the strike, and Superior Court had jurisdiction to issue a preliminary injunction; Superior Court was a court of general jurisdiction with the power to adjudicate any civil action at law or in equity involving local law, and by enacting prohibition against strikes in Comprehensive Merit Personnel Act (CMPA) that was in addition to provision that banned strikes as unfair labor practices Council of the District of Columbia manifested its intent to enable District government to go directly to Superior Court to enjoin strikes by public employees. *Feaster v. Vance*, 832 A.2d 1277, 2003 D.C. App. LEXIS 566 (2003).

Though the District of Columbia Board of Education is an independent agency, the Board is still one of the subdivisions of the District government, for purposes of prohibition against strikes by public employees contained in the Comprehensive Merit Personnel Act (CMPA). *Feaster v. Vance*, 832 A.2d 1277, 2003 D.C. App. LEXIS 566 (2003).

Unclean hands.

Unclean hands doctrine was inapplicable in action by superintendent of school district and

District of Columbia seeking an injunction against threatened strike by school employees in which unions alleged school district failed to bargain in good faith, as failure to bargain in good faith would justify an unfair labor practice

complaint before the Public Employee Relations Board, but would not justify a strike in violation of the law. *Feaster v. Vance*, 832 A.2d 1277, 2003 D.C. App. LEXIS 566 (2003).

§ 1-617.06. Employee rights.

(a) All employees shall have the right:

(1) To organize a labor organization free from interference, restraint, or coercion;

(2) To form, join, or assist any labor organization or to refrain from such activity;

(3) To bargain collectively through representatives of their own choosing as provided in this subchapter; and

(4) To refrain from any or all such activities under paragraphs (1), (2), and (3) of this subsection, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in § 1-617.11.

(b) Notwithstanding any other provision in this chapter, an individual employee may present a grievance at any time to his or her employer without the intervention of a labor organization: Provided, however, that the exclusive representative is afforded an effective opportunity to be present and to offer its view at any meetings held to adjust the complaint. Any employee or employees who utilize this avenue of presenting personal complaints to the employer may not do so under the name, or by representation, of a labor organization. Adjustments of grievances must be consistent with the terms of the applicable collective bargaining agreement. Where the employee is not represented by the union with exclusive recognition for the unit, no adjustment of a grievance shall be considered as a precedent or as relevant either to the interpretation of the collective bargaining agreement or to the adjustment of other grievances.

(Mar. 3, 1979, D.C. Law 2-139, § 1706, 25 DCR 5740; Oct. 1, 2002, D.C. Law 14-190, § 3832(c), 49 DCR 6968.)

Section references. — This section is referred to in §§ 1-617.02 and 1-617.04.

Prior Codifications. — 1981 Ed., § 1-618.6.

1973 Ed., § 1-347.6.

Effect of amendments. — D.C. Law 14-190, in subsec. (a), made nonsubstantive changes in pars. (2) and (3), and added par. (4).

Emergency legislation. — For temporary (90 day) amendment of section, see § 3732(c) of

Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 14-190. — For Law 14-190, see notes following § 1-301.131.

§ 1-617.07. Union security; dues deduction.

Any labor organization which has been certified as the exclusive representative shall, upon request, have its dues and uniform assessments deducted and collected by the employer from the salaries of those employees who authorize the deduction of said dues. Such authorization, costs, and termina-

tion shall be proper subjects of collective bargaining. Service fees may be deducted from an employee's salary by the employer if such a provision is contained in the bargaining agreement.

(Mar. 3, 1979, D.C. Law 2-139, § 1707, 25 DCR 5740.)

Prior Codifications. — 1981 Ed., § 1-618.7. legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

1973 Ed., § 1-347.7.

Legislative history of Law 2-139. — For

CASE NOTES

In general.

Board of Education employees were required to exhaust administrative remedies before Public Employee Relations Board before bringing suit for relief from allegedly unauthorized deduction of union dues from their wages. D.C. Code 1981, § 1-618.13(c). *Hawkins v. Hall*, 537 A.2d 571, 1988 D.C. App. LEXIS 39 (1988).

Board of Education employees were not re-

lieved of duty to exhaust administrative remedies prior to bringing suit against Board for unauthorized deduction of union dues, though complaint included claim of conversion, in that facts alleged, that withheld dues had been escrowed pending ratification of new collective bargaining agreement, did not establish conversion. *Hawkins v. Hall*, 537 A.2d 571, 1988 D.C. App. LEXIS 39 (1988).

§ 1-617.08. Management rights; matters subject to collective bargaining.

(a) The respective personnel authorities (management) shall retain the sole right, in accordance with applicable laws and rules and regulations:

(1) To direct employees of the agencies;

(2) To hire, promote, transfer, assign, and retain employees in positions within the agency and to suspend, demote, discharge, or take other disciplinary action against employees for cause;

(3) To relieve employees of duties because of lack of work or other legitimate reasons;

(4) To maintain the efficiency of the District government operations entrusted to them;

(5) To determine:

(A) The mission of the agency, its budget, its organization, the number of employees, and to establish the tour of duty;

(B) The number, types, and grades of positions of employees assigned to an agency's organizational unit, work project, or tour of duty;

(C) The technology of performing the agency's work; and

(D) The agency's internal security practices; and

(6) To take whatever actions may be necessary to carry out the mission of the District government in emergency situations.

(a-1) An act, exercise, or agreement of the respective personnel authorities (management) shall not be interpreted in any manner as a waiver of the sole management rights contained in subsection (a) of this section.

(b) All matters shall be deemed negotiable except those that are proscribed by this subchapter. Negotiations concerning compensation are authorized to the extent provided in § 1-617.16.

(Mar. 3, 1979, D.C. Law 2-139, § 1708, 25 DCR 5740; Apr. 12, 2005, D.C. Law 15-334, § 2(b), 52 DCR 2012.)

Cross references. — Places of employment, written smoking policy, see § 7-1703.02.

Section references. — This section is referred to in §§ 1-608.01 and 1-624.08.

Prior Codifications. — 1981 Ed., § 1-618.8.

1973 Ed., § 1-347.8.

Effect of amendments. — D.C. Law 15-334 rewrote subsec. (a)(5); and added subsec. (a-1). Prior to amendment, subsec. (a)(5) read as follows: “(5) To determine the mission of the agency, its budget, its organization, the number of employees, and the number, types, and grades of positions of employees assigned to an organizational unit, work project, or tour of duty, and the technology of performing its work; or its internal security practices; and”.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 15-334. — For Law 15-334, see notes following § 1-612.01.

Editor's notes. — Compensation of Members of Boards and Commissions Emergency Disapproval Resolution of 1993: Pursuant to Resolution 10-122, effective August 6, 1993, the Council disapproved, on an emergency basis, rules to implement § 1108 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978.

CASE NOTES

In general.

Public Employee Relations Board was justified in concluding that union's proposals about certain categories of school employees intruded upon management prerogatives and were non-negotiable or were not mandatory subjects of bargaining; proposals related to basic work week, promotions, and assignment and transfer of employees. D.C. Code 1981, §§ 1-613.1(a)(2), 1-618.8(a)(2, 5). *Drivers, Chauffeurs & Helpers Local Union No. 639 v. District of Columbia*, 631 A.2d 1205, 1993 D.C. App. LEXIS 237 (1993).

Beginning date of school year and Good Fri-

day's status as holiday were not mandatory subjects of collective bargaining, and thus Board of Education's determination of issues without consulting teachers' union did not constitute unfair labor practice; administrative agency was entitled to determine that Board's right to establish educational policy outweighed incidental impact of its calendar decisions upon teachers' interests. D.C. Code 1981, §§ 1-613.1(a), 1-618.8(a), 31-102. *Public Employee Relations Bd. v. Washington Teachers' Union Local 6*, 556 A.2d 206, 1989 D.C. App. LEXIS 51 (1989).

§ 1-617.09. Unit determination.

(a) The determination of an appropriate unit will be made on a case-to-case basis and will be made on the basis of a properly-supported request from a labor organization. No particular type of unit may be predetermined by management officials nor can there be any arbitrary limit upon the number of appropriate units within an agency. The essential ingredient in every unit is community of interest: Provided, however, that an appropriate unit must also be one that promotes effective labor relations and efficiency of agency operations. A unit should include individuals who share certain interests, such as skills, working conditions, common supervision, physical location, organization structure, distinctiveness of functions performed, and the existence of integrated work processes. No unit shall be established solely on the basis of the extent to which employees in a proposed unit have organized; however, membership in a labor organization may be considered as 1 factor in evaluating the community of interest of employees in a proposed unit.

(b) A unit shall not be established if it includes the following:

(1) Any management official or supervisor: Except, that with respect to

fire fighters, a unit that includes both supervisors and nonsupervisors may be considered: Provided, further, that supervisors employed by the District of Columbia Public Schools may form a unit which does not include nonsupervisors;

(2) A confidential employee;

(3) An employee engaged in personnel work in other than a purely clerical capacity;

(4) An employee engaged in administering the provisions of this subchapter;

(5) Both professional and nonprofessional employees, unless a majority of the professional employees vote or petition for inclusion in the unit;

(6) Employees of the Council of the District of Columbia; or

(7) Employees within the Educational Service in the District of Columbia Public Schools and the Office of the State Superintendent of Education who serve without tenure pursuant to [§ 1-608.01a].

(c) Two or more units for which the labor organization holds exclusive recognition within an agency may be consolidated into a single larger unit if the Board determines the larger unit to be appropriate. The Board shall certify the labor organization as the exclusive representative in the new unit when the unit is found appropriate.

(Mar. 3, 1979, D.C. Law 2-139, § 1709, 25 DCR 5740; Mar. 20, 2008, D.C. Law 17-122, § 2(d), 55 DCR 1506; Aug. 16, 2008, D.C. Law 17-219, § 4019(c), 55 DCR 7598; Mar. 25, 2009, D.C. Law 17-353, § 224(b), 56 DCR 1117.)

Section references. — This section is referred to in § 1-617.11.

Prior Codifications. — 1981 Ed., § 1-618.9.

1973 Ed., § 1-347.9.

Effect of amendments. — D.C. Law 17-122, in subsec. (b)(1), substituted “Public Schools” for “Board of Education”; in subsec. (b)(5), deleted “or” from the end; in subsec. (b)(6), substituted “; or” for a period; and added subsec. (b)(7).

D.C. Law 17-219, in subsec. (b)(7), substituted “and the Office of the State Superintendent of Education” for “, the Office of the State Superintendent for Education, and the Office of Public Education Facilities Modernization”.

D.C. Law 17-353 validated a previously made technical correction in subsec. (b)(5).

Emergency legislation. — For temporary

(90 day) amendment of section, see § 2(d) of Public Education Personnel Reform Emergency Amendment Act of 2007 (D.C. Act 17-241, January 22, 2008, 55 DCR 983).

For temporary (90 day) amendment, see § 4019(c) of Fiscal Year 2009 Budget Support Emergency Act of 2008 (D.C. Act 17-468, July 28, 2008, 55 DCR 8746).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 17-122. — For Law 17-122, see notes following § 1-608.01a.

Legislative history of Law 17-219. — For Law 17-219, see notes following § 1-308.29.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 1-129.05.

§ 1-617.10. Selection of exclusive representatives; elections.

(a) Exclusive recognition shall be granted to a labor organization which has been selected by a majority of employees in an appropriate unit who participate in an election, conducted by secret ballot, or by any other method in conformity with such rules and regulations as may be prescribed by the Board.

(b)(1) The employer may recognize, without an election, a labor organization

as the exclusive representative for purpose of collective bargaining if an alternative method for determining majority status, such as a card check showing actual membership in the labor organization seeking recognition, has been approved by the Board.

(2) The Board shall issue rules and regulations which provide procedures for decertification of exclusive representatives upon the request of 30 percent of the employees or the District and the holding of an election. Such rules and regulations issued by the Board shall prescribe the criteria under which the District may request decertification, such as lack of any unit activity over a period of time.

(c) Representation elections shall be conducted by an impartial body selected by the mutual agreement of the parties or, in the absence of a mutual agreement, by the Board. The entity conducting the election shall be subject to the provisions of this chapter, those rules and regulations as may be issued by the Board, or any election agreement as may be reached which is not inconsistent with this subchapter.

(d) The Board shall certify the results of each election within 10 working days after the final tally of votes, if:

(1) Within the meaning of such rules and regulations as the Board may issue, no objection to the election is filed alleging that there has been conduct which affected the outcome of the election; or

(2) The Board has determined that the number of challenged ballots is not sufficient to affect the outcome of the election.

(e) If the Board has reason to believe that such allegations or challenges may be valid, the Board shall hold a hearing on the matter within 2 weeks after the date of receipt of the objection. The Board shall give due notice of the hearing to all parties. If the Board determines that the outcome of the election was affected, even by third-party interference, or if the Board determines that the number of challenged ballots was sufficient to affect the outcome of the election, it shall require corrective action and may order a new election. If the Board determines that the alleged conduct did not affect the outcome of the election, it shall immediately certify the election results.

(f) A labor organization seeking exclusive recognition shall submit to the Board and the appropriate agency a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives.

(Mar. 3, 1979, D.C. Law 2-139, § 1710, 25 DCR 5740.)

Cross references. — Police and firefighters retirement and disability, “labor organization” defined, see § 5-704.

Section references. — This section is referred to in §§ 1-617.11, and 1-626.04.

Prior Codifications. — 1981 Ed., § 1-618.10.

1973 Ed., § 1-347.10.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

§ 1-617.11. Rights accompanying exclusive recognition.

(a) The labor organization which has been certified to be the exclusive representative of all employees in the unit shall have the right to act for and

negotiate agreements covering all employees in the unit and shall be responsible for representing the interests of all such employees without discrimination and without regard to membership in the labor organization: Provided, however, that the employee pays dues or service fees consistent with law. Agency shop and other labor organization security provisions should be an appropriate issue for collective bargaining.

(b) Bargaining units established at the time this chapter becomes effective shall continue to be recognized as appropriate units subject to § 1-617.09(c), and labor organizations which have exclusive recognition in bargaining units existing at the time this chapter becomes effective shall continue to enjoy exclusive recognition in these units subject to § 1-617.10(b)(2).

(Mar. 3, 1979, D.C. Law 2-139, § 1711, 25 DCR 5740; Oct. 1, 2002, D.C. Law 14-190, § 3832(d), 49 DCR 6968.)

Prior Codifications. — 1981 Ed., § 1-618.11.

1973 Ed., § 1-347.11.

Effect of amendments. — D.C. Law 14-190, in subsec. (a), substituted “consistent with law” for “in an amount equal to the dues of the employees’ organizations”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 3732(d) of

Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 14-190. — For Law 14-190, see notes following § 1-301.131.

§ 1-617.12. Sunshine provisions.

Collective bargaining sessions between the District and employee organization representatives shall not be open to the public. All fact-finding proceedings under this subchapter shall be open to the public.

(Mar. 3, 1979, D.C. Law 2-139, § 1712, 25 DCR 5740.)

Prior Codifications. — 1981 Ed., § 1-618.12.

1973 Ed., § 1-347.12.

Legislative history of Law 2-139. — For

legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

§ 1-617.13. Remedies; enforcement; judicial review; payment of costs.

(a) Remedies of the Board may include, but shall not be limited to, orders which: Withdraw or decertify recognition of a labor organization; direct a new representation election; recommend that disciplinary action be taken against an employee or group of employees by an appropriate agency head; reinstate, with or without back pay, or otherwise make whole, the employment or tenure of any employee, who the Board finds has suffered adverse economic effects in violation of this subchapter, though for adequate cause under the provisions of subchapter XVI-A of this chapter; compel bargaining in good faith; compel a labor organization or the District to desist from conduct prohibited under this subchapter; or direct compliance with the provisions of this subchapter.

(b) The Board may request the Superior Court of the District of Columbia to

enforce any order issued pursuant to this subchapter, including those for appropriate temporary relief or restraining orders. No defense or objection to an order of the Board shall be considered by the Court, unless such defense or objection was first urged before the Board. The findings of the Board with respect to questions of fact shall be conclusive if supported by substantial evidence on the record considered as a whole. The Court may grant such temporary relief or restraining order as it deems just and proper and enter a decree enforcing, modifying and enforcing as so modified, or setting aside, in whole or in part, the order of the Board.

(c) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain review of such order in the Superior Court of the District of Columbia by filing a request within 30 days after the final order has been issued. The Court shall have the same jurisdiction to review the Board's order and to grant to the Board such order of enforcement as in the case of a request by the Board under subsection (b) of this section.

(d) The Board shall have the authority to require the payment of reasonable costs incurred by a party to a dispute from the other party or parties as the Board may determine.

(Mar. 3, 1979, D.C. Law 2-139, § 1713, 25 DCR 5740; Apr. 12, 2000, D.C. Law 13-91, § 103(r), 47 DCR 520.)

Prior Codifications. — 1981 Ed., § 1-618.13.

1973 Ed., § 1-347.13.

Effect of amendments. — D.C. Law 13-91, in subsec. (a), substituted "subchapter XVII-A" for "subchapter XVII".

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-602.03.

CASE NOTES

ANALYSIS

In general.

Judicial review.

In general.

Former employee's claim that Department of Human Services committed an unfair labor practice when it ordered her dismissal was not within the purview of statute regarding grievance system regulations; statute expressly exempted adverse actions resulting in removals from its purview. *Gibson v. D.C. Pub. Empl. Rels. Bd.*, 785 A.2d 1238, 2001 D.C. App. LEXIS 246 (2001).

Union's timely filed petition for reconsideration with Public Employee Relations Board tolled running of period within which petition for judicial review of Board's order had to be filed in superior court. *D.C. Code 1981, § 1-618.13(c). Drivers, Chauffeurs & Helpers Local Union No. 639 v. District of Columbia*, 631 A.2d 1205, 1993 D.C. App. LEXIS 237 (1993).

Board of Education employees were required to exhaust administrative remedies before Pub-

lic Employee Relations Board before bringing suit for relief from allegedly unauthorized deduction of union dues from their wages. *D.C. Code 1981, § 1-618.13(c). Hawkins v. Hall*, 537 A.2d 571, 1988 D.C. App. LEXIS 39 (1988).

An aggrieved person is not entitled to an automatic stay of the Board's order when an appeal is lodged pursuant to subsection (c) of this section since an automatic stay would prohibit the exercise of the court's discretion on the question of a stay pendente lite. *International Bhd. of Police Officers v. Public Employee Relations Bd.*, 110 WLR 1317 (Super. Ct.).

Judicial review.

While District of Columbia's Comprehensive Merit Protection Act (CMPA) provides that any person aggrieved by a final order of the District of Columbia Public Employees Relations Board (PERB) granting or denying in whole or in part the relief sought may obtain review of such order in the District of Columbia Superior Court, plaintiffs seeking relief from an unfair labor practice ordinarily must exhaust their

administrative remedies with the Board before they may seek relief on arguable unfair labor practice claims in Superior Court. *AFGE v. D.C. Water & Sewer Auth.*, 942 A.2d 1108, 2007 D.C. App. LEXIS 650 (2007).

Trial court abused its discretion by categorically dismissing petition for review of decision of Public Employee Relations Board (PERB), based on agency's failure to omit PERB as respondent in caption of petition for review, without considering prejudice to parties caused by agency's mistake. *Agency Review Rule 1. District of Columbia Dep't of Admin. Servs. v. International Bhd. of Police Officers, Local 445*, 680 A.2d 434, 1996 D.C. App. LEXIS 148 (1996).

Agency's failure to name Public Employee Relations Board (PERB) as respondent in agency's appeal from PERB decision did not require dismissal of petition for review; PERB acted for all practical purposes as respondent, no one could claim significant prejudice from decision

to review petition on its merits since PERB fully participated, and dismissal of entire petition would not diminish prejudice to union, which was initially forced to participate as respondent. *Agency Review Rule 1. District of Columbia Dep't of Admin. Servs. v. International Bhd. of Police Officers, Local 445*, 680 A.2d 434, 1996 D.C. App. LEXIS 148 (1996).

Judicial review of claim that correctional officer's off-duty conduct amounted to insubordination and permitted dismissal was precluded by the failure of the Department of Corrections to demonstrate to arbitrator or the Public Employee Relations Board how officer's conduct could be considered act of insubordination, what "persons" and "property" were affected by the alleged insubordination, or what sort of conduct might have constituted insubordination in other cases. *D.C. Code 1981, § 1-618.13(b). District of Columbia Dep't of Corrections v. Teamsters Union Local 246*, 554 A.2d 319, 1989 D.C. App. LEXIS 23 (1989).

§ 1-617.14. Timeliness of decisions.

All decisions of the Board shall be rendered within a reasonable period of time, and in no event later than 120 days after the matter is submitted or referred to it for a decision.

(Mar. 3, 1979, D.C. Law 2-139, § 1714, 25 DCR 5740.)

Prior Codifications. — 1981 Ed., § 1-618.14.

1973 Ed., § 1-347.14.

Legislative history of Law 2-139. — For

legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

§ 1-617.15. Collective bargaining agreements.

(a) An agreement with a labor organization is subject to the approval of the Mayor or his or her designee, or in the case of employees of the District of Columbia Board of Education or the Board of Trustees of the University of the District of Columbia, by the respective Boards. An agreement shall be approved within 45 days from the date of its execution by the parties, if it conforms to applicable law. If disapproved because certain provisions are asserted to be contrary to law, the agreement shall either be returned to the parties for renegotiation of the offensive provisions or such provisions shall be deleted from the agreement. An agreement which has not been approved or disapproved within the prescribed period of 45 days shall go into effect on the 46th day and shall be binding on the parties.

(b) The Mayor and each appropriate personnel authority shall submit the collective bargaining agreement to the Council for its information.

(Mar. 3, 1979, D.C. Law 2-139, § 1715, 25 DCR 5740; Feb. 24, 1987, D.C. Law 6-177, § 3(v), 33 DCR 7241; Aug. 1, 1996, D.C. Law 11-152, § 302(u), 43 DCR 2978.)

Prior Codifications. — 1981 Ed., § 1-618.15.

1973 Ed., § 1-347.15.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 6-177. — For legislative history of D.C. Law 6-177, see Historical and Statutory Notes following § 1-601.02.

Legislative history of Law 11-152. — For

legislative history of D.C. Law 11-152, see Historical and Statutory Notes following § 1-602.02.

Editor's notes. — Repeal of § 3 of Law 6-177: Section 4(b) of D.C. Law 6-177 provided that the provisions of § 3 are repealed on the 1st day following the 36-month period after February 24, 1987.

Repeal of § 4(b) of Law 6-177: Section 3(b) of D.C. Law 8-74, effective March 15, 1990, provided that § 4(b) of D.C. Law 6-177 is repealed.

§ 1-617.16. Collective bargaining concerning compensation.

(a) The Board shall provide for collective bargaining concerning compensation under the procedures of and on the dates provided in § 1-617.17. The Mayor, the District of Columbia Board of Education for its educational employees, and the Board of Trustees of the University of the District of Columbia for its educational employees shall negotiate agreements regarding noncompensation issues at the same time as compensation issues.

(b) The provisions of this section shall become effective on January 1, 1980, and shall apply to all employees, including employees described in § 1-602.04, of a particular occupational group who are represented by a labor organization which has been granted exclusive recognition under this chapter by the Board. The determination of an appropriate unit for the purpose of negotiations concerning compensation shall not require a request from a labor organization. In determining appropriate bargaining units for negotiations concerning compensation, the Board shall authorize broad units of occupational groups so as to minimize the number of different pay systems or schemes. The Board may authorize bargaining by multiple employer or employee groups as may be appropriate.

(Mar. 3, 1979, D.C. Law 2-139, § 1716, 25 DCR 5740; Feb. 24, 1987, D.C. Law 6-177, § 3(w), 33 DCR 7241; Aug. 1, 1996, D.C. Law 11-152, § 302(v), 43 DCR 2978.)

Cross references. — Retirement of public school teachers, compensation and salaries, purchase of annuity contracts, see § 38-2023.16.

Retirement of public school teachers, "eligible service" defined, see § 38-2021.13.

Section references. — This section is referred to in §§ 1-602.06, 1-617.08, 1-617.17, and 1-636.02.

Prior Codifications. — 1981 Ed., § 1-618.16.

1973 Ed., § 1-347.16.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 6-177. — For legislative history of D.C. Law 6-177, see Historical and Statutory Notes following § 1-601.02.

Legislative history of Law 11-152. — For legislative history of D.C. Law 11-152, see Historical and Statutory Notes following § 1-602.02.

Editor's notes. — Repeal of § 3 of Law 6-177: Section 4(b) of D.C. Law 6-177 provided that the provisions of § 3 are repealed on the 1st day following the 36-month period after February 24, 1987.

Repeal of § 4(b) of Law 6-177: Section 3(b) of D.C. Law 8-74, effective March 15, 1990, provided that § 4(b) of D.C. Law 6-177 is repealed.

§ 1-617.17. Collective bargaining concerning compensation.

(a) Collective bargaining concerning compensation is authorized as provided in §§ 1-602.06 and 1-617.16. Such compensation bargaining shall preempt other provisions of this subchapter except as provided in this section. The principles of § 1-611.03 shall apply to compensation set under the provisions of this section.

(b) As provided in this section, the Mayor, the Board of Education, the Board of Trustees of the University of the District of Columbia, and each independent personnel authority, or any combination of the above ("management") shall meet with labor organizations ("labor") which have been authorized to negotiate compensation at reasonable times in advance of the District's budget making process to negotiate in good faith with respect to salary, wages, health benefits, within-grade increases, overtime pay, education pay, shift differential, premium pay, hours, and any other compensation matters. No subordinate agency shall negotiate a collective bargaining agreement.

(c) Repealed.

(d) Repealed.

(e) Repealed.

(f)(1) Collective bargaining for a given fiscal year or years shall take place at such times as to be reasonably assured that negotiations shall be completed prior to submission of a budget for said year(s) in accordance with this section.

(A)(i) A party seeking to negotiate a compensation agreement shall serve a written demand to bargain upon the other party during the period 120 days to 90 days prior to the first day of the fiscal year, for purposes of negotiating a compensation agreement for the subsequent fiscal year.

(ii) Where the compensation agreement to be negotiated is for a newly certified collective bargaining unit assigned to a newly created compensation unit, working conditions or other non-compensation matters shall be negotiated concurrently with negotiations concerning compensation.

(iii) Where the compensation agreement to be negotiated is for a newly certified collective bargaining unit assigned to an existing compensation unit, the parties shall proceed promptly to negotiate concurrently any working conditions, other non-compensation matters, and coverage of the compensation agreement.

(B) Negotiations among the parties shall continue until a settlement is reached, or until 180 days after negotiations have commenced.

(2) If the parties have failed to begin negotiations within 90 days of the end of the annual notice period, or have failed to reach settlement on any issues 180 days after negotiations have commenced, then an automatic impasse may be declared by any party. The declaring party shall promptly notify the Executive Director of the Public Employee Relations Board in writing of an impasse. The Executive Director shall assist in the resolution of this declared automatic impasse by selecting an impartial person experienced in public sector disputes to serve as a mediator. If the mediator does not resolve the declared automatic impasse within 30 days, or any shorter period desig-

nated by the mediator, or before the automatic impasse date, the Executive Director, upon the request of any party, shall appoint an impartial Board of Arbitration to investigate the labor-management issues involved in the dispute, conduct whatever hearing it deems necessary, and issue a written award to the parties with the object of achieving a prompt and fair settlement of the dispute. The last best offer of each party shall be the basis for such automatic impasse arbitration. The award shall be issued within 45 days after the Board has been established. The award shall contain findings of fact and a statement of reasons. The award shall be final and binding upon the parties to the dispute.

(3) If the parties reach an impasse on any issues in negotiations before the declared automatic impasse date, any party shall promptly notify the Executive Director of the Public Employee Relations Board in writing. The Executive Director shall assist in the resolution of this impasse by selecting an impartial person experienced in public sector disputes to serve as a mediator. If the mediator does not resolve the impasse within 30 days, or any shorter period designated by the mediator, or before the automatic impasse date, the Executive Director, upon the request of any party, shall appoint an impartial Board of Arbitration to investigate the labor-management issues involved in the dispute, conduct whatever hearing it deems necessary, and issue a written award to the parties with the object of achieving a prompt and fair settlement of the dispute. The last best offer of each party shall be the basis for this impasse arbitration. The award shall be issued within 45 days after the Board has been established. The award shall contain findings of fact and a statement of reasons. The award shall be final and binding upon the parties to the dispute.

(3A) If requested by both parties or ordered by the Executive Director of the Public Employee Relations Board, a mediator or Board of Arbitration appointed pursuant to paragraphs (2) or (3) of this subsection shall consider non-compensation matters at impasse at the same time it considers compensation matters at impasse.

(4) If the procedures set forth in paragraph (1), (2), (3), or (3A) of this subsection are implemented, no change in the status quo shall be made pending the completion of mediation and arbitration, or both.

(5) The factfinder, mediator, and any members of the Board of Arbitration appointed by the Executive Director of the Public Employee Relations Board shall be entitled to compensation at the maximum daily rate allowable by law for each day they are actually engaged in performing services under this section. Compensation for arbitration shall be divided equally and paid one-half by management and one-half by labor; compensation for mediation and fact-finding shall be paid by the moving party, or shared if by mutual request.

(g) Multi-year compensation agreements are encouraged. No compensation agreement shall be for a period of less than 3 years.

(h) Compensation negotiations pursuant to this section shall be confidential among the parties; provided, however, that the Council may appoint observers from its membership and staff, or both, to the negotiations. Such Council

observers will be responsible for informing the members of the Council of the progress of negotiations. All information concerning negotiations shall be considered confidential until impasse resolution proceedings have been concluded or upon settlement. Management shall give the Council the same prior notice of negotiation proceedings that it gives to all parties to the negotiations.

(i)(1) The Mayor shall transmit all settlements, including arbitration awards, to the Council within 60 days after the parties have reached agreement or an arbitration award has been issued with a budget request act, a supplemental budget request act, a budget amendment act, or a reprogramming, as appropriate; except that when a settlement, including an arbitrator's award, has been fully funded by an enacted budget request act, supplemental budget request act, or budget amendment act or an approved reprogramming request, the Mayor shall submit the settlement, including an arbitrator's award, with a certification that the settlement, including arbitrator's award, is fully funded by the previously enacted budget measure or approved reprogramming. The budget request act, supplemental budget request act, budget amendment act, or reprogramming shall fully fund the settlement for the fiscal year to which it applies.

(2) At the same time the Mayor transmits a settlement, including any arbitration award, pursuant to paragraph (1) of this subsection, the Mayor shall also transmit a financial plan that includes proposed funding for both actual and annualization costs of settlements for future fiscal years contained in a multi-year compensation agreement.

(3) The Mayor shall fully support the passage of settlements by every reasonable means before all legislative bodies, except that the Mayor is not required to support Council approval of an arbitrator's award, or to support Council approval of a settlement negotiated by the Board of Education, the Board of Trustees of the University of the District of Columbia, or other independent personnel authority, unless the Mayor participated in the negotiations.

(j) A settlement, including an arbitrator's award, shall take effect on the 30th calendar day, excluding days of Council recess, after the Mayor and the Council enact the budget request act, the supplemental budget request act, or the budget amendment act, or approve the reprogramming, as appropriate, that contains the funded settlement, unless prior to the 30th calendar day, the Council accepts or rejects the settlement, including an arbitrator's award, by resolution. In the case of a settlement, including an arbitrator's award, submitted after the enactment of budget legislation or the approval of a reprogramming that fully funds the settlement, including arbitrator's award, the settlement, including arbitrator's award shall take effect on the 30th calendar day, excluding days of Council recess, after the Mayor transmits the settlement, including arbitrator's award, to the Council with the Mayor's certification that the settlement, including arbitrator's award, has been fully funded in previously enacted budget legislation or an approved reprogramming, unless prior to the 30th calendar day, the Council accepts or rejects the settlement, including arbitrator's award, by resolution. If the Council rejects a settlement, including an arbitrator's award, then the settlement shall be

returned to the parties for renegotiation, with specific reasons for the rejection appended to the document disclosing the rejection of the settlement.

(k) The Mayor shall fully fund in future fiscal year budget requests, any settlement, including an arbitrator's award, for future fiscal years contained in a multi-year compensation agreement that has been approved pursuant to this section. Any settlement, including an arbitrator's award, that has been approved pursuant to this section shall be included in either the District budget request or in any supplemental budget request and shall be fully supported by the District by every reasonable means before Congressional bodies.

(l) Notwithstanding any provisions of subchapters XXII, XXIII, or XXVII of this chapter to the contrary, the health, life, and retirement programs authorized by these subchapters are proper subjects of collective bargaining under this section.

(m) When the Public Employee Relations Board makes a determination as to the appropriate bargaining unit for the purpose of compensation negotiations pursuant to § 1-617.16, negotiations for compensation between management and the exclusive representative of the appropriate bargaining unit shall commence as provided for in subsection (f) of this section. The Mayor shall negotiate agreements concerning working conditions at the same time as he or she negotiates compensation issues.

(n)(1) Notwithstanding any other provisions of law, the District is authorized to establish the compensation of District employees and to negotiate with the exclusive representative of the appropriate bargaining unit concerning the compensation rules for employees' overtime work in excess of the basic non-overtime workday, in accordance with this subchapter and the Fair Labor Standards Act of 1938, approved June 25, 1938 (52 Stat. 1060; 29 U.S.C. § 201 et seq.).

(2) This subsection shall be retroactively effective as of the fiscal year beginning October 1, 2004.

(Mar. 3, 1979, D.C. Law 2-139, § 1113, 25 DCR 5740; redesignated as § 1717, Mar. 4, 1981, D.C. Law 3-130, § 2(f), 28 DCR 277; Apr. 25, 1984, D.C. Law 5-77, § 2, 31 DCR 1225; Aug. 1, 1985, D.C. Law 6-15, § 7(f), 32 DCR 3570; Feb. 24, 1987, D.C. Law 6-177, § 3(x), 33 DCR 7241; June 5, 1987, D.C. Law 7-6, § 2, 34 DCR 2637; July 25, 1987, D.C. Law 7-16, § 2, 34 DCR 3799; Oct. 1, 1987, D.C. Law 7-27, § 2(h), 34 DCR 5079; Apr. 30, 1988, D.C. Law 7-104, § 36(b), 35 DCR 147; Mar. 17, 1993, D.C. Law 9-243, § 2, 40 DCR 636; May 16, 1995, D.C. Law 10-255, § 2(b), 41 DCR 5193; Aug. 1, 1996, D.C. Law 11-152, § 302(w), 43 DCR 2978; Mar. 20, 1998, D.C. Law 12-60, § 1001, 44 DCR 7378; June 10, 1998, D.C. Law 12-124, § 101(t), 45 DCR 2464; Sept. 18, 1998, D.C. Law 12-151, § 2(b), 45 DCR 4043; Oct. 1, 2002, D.C. Law 14-190, § 3832(e), 49 DCR 6968; Dec. 7, 2004, D.C. Law 15-205, § 1022, 51 DCR 8441; Apr. 12, 2005, D.C. Law 15-334, § 2(c), 52 DCR 2012; Oct. 20, 2005, D.C. Law 16-33, § 1021, 52 DCR 7503; Mar. 25, 2009, D.C. Law 17-367, § 2, 56 DCR 1336; Sept. 24, 2010, D.C. Law 18-223, § 1032(b), 57 DCR 6242; Apr. 8, 2011, D.C. Law 18-370, § 793, 58 DCR 1008.)

Section references. — This section is referred to in §§ 1-617.16 and 1-636.02.

Prior Codifications. — 1981 Ed., § 1-618.17.

1973 Ed., § 1-341.13.

Effect of amendments. — D.C. Law 14-190 repealed subsecs. (c) and (e); rewrote pars. (1) and (2) of subsec. (f); deleted the last sentence in subsec. (g); and rewrote subsec. (m).

D.C. Law 15-205 added subsec. (n).

D.C. Law 15-334, in subsec. (f), rewrote par. (1)(A), substituted “45” for “20” in par. (3), added par. (3A), and substituted “(1), (2), (3), or (3A)” for “(1), (2), or (3)” in par. (4); and, in subsec. (h), substituted “until impasse resolution proceedings have been concluded or upon settlement” for “until impasse or settlement”.

D.C. Law 16-33, in subsec. (b), substituted “compensation matters. No subordinate agency shall negotiate a collective bargaining agreement.” for “compensation matters.”.

D.C. Law 17-367, in subsec. (i)(1), substituted “Council within 60 days after the parties have reached agreement or an arbitration award has been issued with a budget” for “Council with a budget”.

D.C. Law 18-223, in subsec. (n)(1), deleted “in excess of the basic non-overtime workday” following “overtime work”.

D.C. Law 18-370, in subsec. (n)(1), substituted “for employees’ overtime work in excess of the basic non-overtime workday” for “for employees’ overtime work”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of the Budget Implementation Temporary Act of 1995 (D.C. Law 11-18, May 27, 1995, law notification 42 DCR 2845).

For temporary (225 day) amendment of section, see § 3 of the Budget Implementation Exemption Temporary Amendment Act of 1995 (D.C. Law 11-27, law notification July 14, 1995, 42 DCR 3833).

Section 3(a) of D.C. Law 18-283 repealed subsec. (b).

Section 4 of D.C. Law 18-283, in subsec. (n)(1), reinstated “in excess of the basic non-overtime workday” following “for employees’ overtime work”.

Section 6(b) of D.C. Law 18-283 provided that the act shall expire after 225 days of its having taken effect.

Section 2 of D.C. Law 16-103 provided as follows:

“Sec. 2. Notwithstanding section 1717(b) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-617.17(b)), the Department of Mental Health may complete ongoing negotiations of collective bargaining agreements.”

Section 4(b) of D.C. Law 16-103 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 1001 of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and see § 1001 of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

For temporary (90 day) amendment of section, see § 3732(e) of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

For temporary (90 day) amendment of section, see § 1022 of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 1022 of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

For temporary (90 day) amendment of section, see § 1021 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of section, see § 2 of Department of Mental Health Collective Bargaining Agreements Emergency Act of 2006 (D.C. Act 16-254, January 26, 2006, 53 DCR 761).

For temporary (90 day) amendment of section, see § 2 of Department of Mental Health Collective Bargaining Agreements Congressional Review Emergency Act of 2006 (D.C. Act 16-377, May 19, 2006, 53 DCR 4397).

For temporary (90 day) amendment of section, see § 1032(b) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

For temporary (90 day) amendment of section, see §§ 3(a), 4 of Budget Support Act Clarification and Technical Amendment Emergency Amendment Act of 2010 (D.C. Act 18-543, October 5, 2010, 57 DCR 9630).

For temporary (90 day) amendment of section, see § 792 of Fiscal Year 2011 Supplemental Budget Support Emergency Act of 2010 (D.C. Act 18-694, January 19, 2011, 58 DCR 662).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 3-130. — For legislative history of D.C. Law 3-130, see Historical and Statutory Notes following § 1-611.14.

Legislative history of Law 5-77. — Law 5-77 was introduced in Council and assigned Bill No. 5-327, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on January 31, 1984 and February 14, 1984, re-

spectively. Signed by the Mayor on March 1, 1984, it was assigned Act No. 5-113 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-15. — For legislative history of D.C. Law 6-15, see Historical and Statutory Notes following § 1-608.01.

Legislative history of Law 6-177. — For legislative history of D.C. Law 6-177, see Historical and Statutory Notes following § 1-601.02.

Legislative history of Law 7-6. — Law 7-6 was introduced in Council and assigned Bill No. 7-117. The Bill was adopted on first and second readings on March 17, 1987 and March 31, 1987, respectively. Signed by the Mayor on April 15, 1987, it was assigned Act No. 7-16 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-16. — Law 7-16 was introduced in Council and assigned Bill No. 7-118, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on May 5, 1987 and May 19, 1987, respectively. Signed by the Mayor on June 1, 1987, it was assigned Act No. 7-30 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-27. — For legislative history of D.C. Law 7-27, see Historical and Statutory Notes following § 1-621.02.

Legislative history of Law 7-104. — For legislative history of D.C. Law 7-104, see Historical and Statutory Notes following § 1-604.08.

Legislative history of Law 9-87. — Law 9-87, the "District of Columbia Government Comprehensive Merit Personnel Act of 1978 Council Review Period Temporary Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-387. The Bill was adopted on first and second readings on December 17, 1991, and January 7, 1992, respectively. Approved without the signature of the Mayor on January 30, 1992, it was assigned Act No. 9-150 and transmitted to both Houses of Congress for its review. D.C. Law 9-87 became effective on March 24, 1992.

Legislative history of Law 9-203. — Law 9-203, the "District of Columbia Government Comprehensive Merit Personnel Act of 1978 Compensation Settlement Review Period Temporary Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-660. The Bill was adopted on first and second readings on October 6, 1992, and November 4, 1992, respectively. Approved without the signature of the Mayor on November 27, 1992, it was assigned Act No. 9-329 and transmitted to both Houses of Congress for its review. D.C. Law 9-203 became effective on March 16, 1993.

Legislative history of Law 9-243. — Law 9-243, the "District of Columbia Government

Comprehensive Merit Personnel Act of 1978 Compensation Settlement Review Period Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-622, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1992, and December 15, 1992, respectively. Signed by the Mayor on January 5, 1993, it was assigned Act No. 9-377 and transmitted to both Houses of Congress for its review. D.C. Law 9-243 became effective on March 17, 1993.

Legislative history of Law 10-255. — For legislative history of D.C. Law 10-255, see Historical and Statutory Notes following § 1-611.03.

Legislative history of Law 11-152. — For legislative history of D.C. Law 11-152, see Historical and Statutory Notes following § 1-602.02.

Legislative history of Law 12-60. — For legislative history of D.C. Law 12-60, see Historical and Statutory Notes following § 1-611.08.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Legislative history of Law 12-151. — For legislative history of D.C. Law 12-151, see Historical and Statutory Notes following § 1-605.02.

Legislative history of Law 14-190. — For Law 14-190, see notes following § 1-301.131.

Legislative history of Law 15-205. — For Law 15-205, see notes following § 1-204.42.

Legislative history of Law 15-334. — For Law 15-334, see notes following § 1-612.01.

Legislative history of Law 16-33. — Law 16-33, the "Fiscal Year 2006 Budget Support Act of 2005", was introduced in Council and assigned Bill No. 16-200 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 10, 2005, and June 21, 2005, respectively. Signed by the Mayor on July 26, 2005, it was assigned Act No. 16-166 and transmitted to both Houses of Congress for its review. D.C. Law 16-33 became effective on October 20, 2005.

Legislative history of Law 17-367. — Law 17-367, the "Timely Transmission of Compensation Agreements Amendment Act of 2008", was introduced in Council and assigned Bill No. 17-987 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 2, 2008, and December 16, 2008, respectively. Signed by the Mayor on January 16, 2009, it was assigned Act No. 17-702 and transmitted to both Houses of Congress for its review. D.C. Law 17-367 became effective on March 25, 2009.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 1-301.78.

Legislative history of Law 18-370. — For history of Law 18-370, see notes under § 1-301.01.

Short title. — Short title of subtitle C of title I of Law 15-205: Section 1021 of D.C. Law 15-205 provided that subtitle C of title I of the act may be cited as the Compensation Bargaining Unit Overtime Negotiation Amendment Act of 2004.

Short title of subtitle E of title I of Law 16-33: Section 1020 of D.C. Law 16-33 provided that subtitle E of title I of the act may be cited as the Collective Bargaining Agreements Amendment Act of 2005.

Resolutions. — Resolution 15-794, the “Compensation Agreement between the District of Columbia and Compensation Unit 33 Approval Resolution of 2004”, was approved effective December 21, 2004.

Resolution 15-796, the “Compensation Settlement for Employees Represented by the American Federation of State, County, and Municipal Employees, Local 2095, and the American Federation of Government Employees, Local 383, Approval Resolution of 2004”, was approved effective December 21, 2004.

Resolution 16-111, the “Compensation Settlement for Employees Represented by the Services Employees International Union, District 1199-E-DC Approval Resolution of 2005”, was approved effective April 5, 2005.

Resolution 16-160, the “Police Compensation Approval Resolution of 2005”, was approved effective June 7, 2005.

Resolution 16-250, the “Compensation Correction for Employees in Class 3, Compensation Unit #3 Emergency Approval Resolution of 2005”, was approved effective July 6, 2005.

Resolution 16-287, the “Compensation Agreement Between the District of Columbia and Compensation Unit 13 Approval Resolution of 2005”, was approved effective September 20, 2005.

Resolution 16-380, the “Compensation Agreement Between the District of Columbia and the Doctors Council of the District of Columbia Representing Compensation Unit 19 Approval Resolution of 2005”, was approved effective November 15, 2005.

Resolution 18-423, the “Compensation and Working Conditions Collective Bargaining Agreement between the District of Columbia Public Schools and Teamsters Locals 639 and 730, affiliated with the International Brotherhood of Teamsters Approval Resolution of 2010”, was approved effective March 16, 2010.

Resolution 18-531, the “Compensation and Working Conditions Collective Bargaining Agreement Between the District of Columbia and the Washington Teachers’ Union, American Federation of Teachers Local No. 6, AFL CIO

Emergency Approval Resolution of 2010”, was approved effective June 29, 2010.

Editor’s notes. — Section 794 of D.C. Law 18-370 provided: “Sec. 794. This subtitle shall apply as of January 3, 2011.”

Application of Law 12-60: Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

Repeal of § 3 of Law 6-177: Section 4(b) of D.C. Law 6-177 provided that the provisions of § 3 are repealed on the 1st day following the 36-month period after February 24, 1987.

Repeal of § 4(b) of Law 6-177: Section 3(b) of D.C. Law 8-74, effective March 15, 1990, provided that § 4(b) of D.C. Law 6-177 is repealed.

Applicability of § 101(t) of D.C. Law 12-124: Section 401(c) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(h), (l), (m), (n), (o)(2) through (5), (q), (r), (t), (u), (w), and (y) of the act shall apply as of October 21, 1998. Compensation Settlement for Employees in Compensation Unit 12 Approval Resolution of 1994: Pursuant to Proposed Resolution 11-18, deemed approved February 18, 1995, Council approved the negotiated compensation settlement submitted by the Mayor of the District of Columbia for employees in Compensation Unit 12. Compensation Settlement for Employees in Compensation Unit 19 Approval Resolution of 1994: Pursuant to Proposed Resolution 11-21, deemed approved February 18, 1995, Council approved the negotiated compensation settlement submitted by the Mayor of the District of Columbia for employees in Compensation Unit 19. Compensation Settlement for Employees in Compensation Unit 18 Approval Resolution of 1994: Pursuant to Proposed Resolution 11-24, deemed approved February 18, 1995, Council approved the negotiated compensation settlement submitted by the Mayor of the District of Columbia for employees in Compensation Unit 18. Compensation Settlement for Employees in Compensation Unit 4 Approval Emergency Resolution of 1998: Pursuant to Resolution 12-432, effective March 3, 1998, the Council approved, on an emergency basis, a negotiated settlement agreement for uniformed members of the Fire and Emergency Medical Services Department covered by collective bargaining. Career and Excepted Service Compensation System Changes for Non-Union Employees and the Negotiated Compensation Agreements for Union Employees of the DOC Emergency Approval Resolution of 1998: Pursuant to Resolution 12-462, effective April 7, 1998, the Council approved, on an emergency basis, the proposed compensation changes for Career and Excepted Service employees and negotiated compensation agreements for Bargaining Unit employees of the Department of Corrections in Compensation Units 1, 2, 13, and 19. Compensation Settlement for Employees in Compensation

Units 1 and 2 Emergency Approval Resolution of 1998: Pursuant to Resolution 12-484, effective May 5, 1998, the Council approved, the negotiated compensation settlement by the Mayor for certain employees in Compensation Units 1 and 2. Compensation Settlement for Employees in Compensation Unit 3 Emergency Approval Resolution of 1998: Pursuant to Resolution 12-556, effective June 16, 1998, the Council approved the compensation settlement for employees in Compensation Unit 3. Compensation Settlement for Doctors, Dentists and Podiatrists in Compensation Unit 19 Emergency Approval Resolution of 1998: Pursuant to Resolution 12-602, effective July 7, 1998, the Council approved, on an emergency basis, the negotiated compensation settlement for Physicians, Dentists, and Podiatrists within Compensation Unit 19 covered by collective bargaining. Compensation Settlement for Metropolitan Police Department Civilian Communication and Cellblock Employees in Compensation Unit 1 Emergency Approval Resolution of 1998: Pursuant to Resolution 12-768, effective November 10, 1998, the Council approved, on an emergency basis, a negotiated

settlement agreement for civilian members of the District of Columbia Metropolitan Police Department Communications Division and Cellblock Unit covered by collective bargaining. Compensation Settlement for Employees in Compensation Unit 4 Emergency Approval Resolution of 1998: Pursuant to Resolution 12-776, effective November 10, 1998, the Council approved, on an emergency basis, a negotiated settlement agreement for uniformed members of the Fire and Emergency Medical Services Department covered by collective bargaining. Compensation Settlement for DS-699 (Emergency Medical Technician, Intermediate Technician, and Paramedic) Employees in Compensation Unit 1 Emergency Declaration Resolution of 1998: Pursuant to Resolution 12-844, effective December 15, 1998, the Council approved, on an emergency basis, a negotiated settlement agreement for civilian employees in series DS-699 (Emergency Medical Technician, Intermediate Technician, and Paramedic) of the Fire and Emergency Medical Services Department in Compensation Unit 1 covered by collective bargaining.

CASE NOTES

In general.

Once an arbitration panel which is convened under the Comprehensive Merit Personnel Act issues its decision and award, the District of Columbia Council can accept or reject the award; if Council disapproves the award, further collective bargaining is to occur, otherwise the award goes into effect and the mayor is required to support the arbitration panel, and the District government is required to include the award in its budget requests to Congress. D.C. Code 1981, § 1-618.17(i-k). Council of School Officers v. Vaughn, 553 A.2d 1222, 1989 D.C. App. LEXIS 14 (1989).

If labor organization sought to challenge approval by the district council, of interest arbi-

tration award under the Comprehensive Merit Personnel Act, it would be required to sue the District government. D.C. Code 1981, § 1-618.17. Council of School Officers v. Vaughn, 553 A.2d 1222, 1989 D.C. App. LEXIS 14 (1989).

Interest arbitration award was not final and effective where District of Columbia Council had not reviewed the award for either approval or rejection, so that the Superior Court was without jurisdiction to determine whether the award was subject to judicial review. D.C. Code 1981, § 1-618.17. Council of School Officers v. Vaughn, 553 A.2d 1222, 1989 D.C. App. LEXIS 14 (1989).

§ 1-617.18. Evaluation process for public school employees.

Notwithstanding any other provision of law, rule, or regulation, during fiscal year 2006 and each succeeding fiscal year the evaluation process and instruments for evaluating District of Columbia Public Schools employees shall be a non-negotiable item for collective bargaining purposes.

(Mar. 3, 1979, D.C. Law 2-139, § 1718, as added Oct. 16, 2006, 120 Stat. 2039, Pub. L. 109-356, § 302.)

Cross references. — Mayor and Council members, coverage, see § 1-602.02.

Merit system, coverage and limitations of Chapter 6 of Title 1, see § 1-602.02.

Merit system, effective date provisions, see § 1-636.02.

Prior Codifications. — 1981 Ed., § 1-618.18.

Editor's notes. — Pub. L. 104-134, § 143, Apr. 26, 1996, 110 Stat. 1321 214, provided as follows:

“§ 1-617.18. Public school employee evaluations.”

“Notwithstanding any other provision of law, rule, or regulation, the evaluation process and instruments for evaluating District of Columbia Public Schools employees shall be a nonnegotiable item for collective bargaining purposes.”

Subchapter XVIII. Employee Conduct.

§ 1-618.01. Standards of conduct.

(a) Each employee, member of a board or commission, or a public official of the District government must at all times maintain a high level of ethical conduct in connection with the performance of official duties, and shall refrain from taking, ordering, or participating in any official action which would adversely affect the confidence of the public in the integrity of the District government.

(a-1) As a matter of public policy, each employee of the District is encouraged to report, pursuant to subchapter XV-A of this chapter, any violation of a law or rule, or the misuse of government resources, as soon as the employee, member of a board or commission, or a public official becomes aware of the violation or misuse of resources.

(a-2)(1) Upon commencement of employment, any person required to file pursuant to §§ 1-1162.24 and 1-1162.25 (“Filers”) shall be provided with an ethics manual and information about the Code of Conduct.

(2) No later than 90 days after commencement of employment, Filers shall certify that they have undergone ethics training developed by the District of Columbia Board of Ethics and Government Accountability. The required training may be provided electronically, in person, or both as considered appropriate by the District of Columbia Board of Ethics and Government Accountability.

(3) Filers shall certify on an annual basis that they have completed at least one ethics training program within the previous year.

(a-3) Notwithstanding the penalty provisions of this chapter, any public official who knowingly violates any provision of subsection (a-2) of this section may be subject to an adverse performance action but not termination.

(b) The Mayor shall issue rules and regulations governing the ethical conduct of all District employees after consultation with the District of Columbia Board of Education, the Board of Trustees of the University of the District of Columbia, and recognized labor representatives of District employees, and shall require the submission by designated employees at a policy making, contract negotiating, or purchasing level of reports of financial interest in matters which may create conflicts of interest. The Mayor shall provide for the annual auditing of all reports filed under the authority of this subsection.

(Mar. 3, 1979, D.C. Law 2-139, § 1801, 25 DCR 5740; Feb. 24, 1987, D.C. Law 6-177, § 3(y), 33 DCR 7241; Sept. 26, 1990, D.C. Law 8-169, § 2(b), 37 DCR

4835; Aug. 1, 1996, D.C. Law 11-152, § 302(x), 43 DCR 2978; Oct. 19, 2002, D.C. Law 14-213, § 3(1), 49 DCR 8140; Apr. 27, 2012, D.C. Law 19-124, § 501(c)(3), 59 DCR 1862.)

Prior Codifications. — 1981 Ed., § 1-619.1.

1973 Ed., § 1-348.1.

Effect of amendments. — D.C. Law 14-213, in subsec. (a-1), substituted “chapter 6 of subchapter XV-A of Title 1” for “§ 1-615.03”.

D.C. Law 19-124, in subsecs. (a) and (a-1), substituted “employee, member of a board or commission, or a public official” for “employee”; and added subsecs. (a-2) and (a-3).

Emergency legislation. — For temporary (90 day) amendment of section, see § 401(c)(3) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 6-177. — For legislative history of D.C. Law 6-177, see His-

torical and Statutory Notes following § 1-601.02.

Legislative history of Law 8-169. — For legislative history of D.C. Law 8-169, see Historical and Statutory Notes following § 1-615.03.

Legislative history of Law 11-152. — For legislative history of D.C. Law 11-152, see Historical and Statutory Notes following § 1-602.02.

Legislative history of Law 14-213. — For Law 14-213, see notes following § 1-603.01.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

Editor's notes. — Repeal of § 3 of Law 6-177: Section 4(b) of D.C. Law 6-177 provided that the provisions of § 3 are repealed on the 1st day following the 36-month period after February 24, 1987.

Repeal of § 4(b) of Law 6-177: Section 3(b) of D.C. Law 8-74, effective March 15, 1990, provided that § 4(b) of D.C. Law 6-177 is repealed.

§ 1-618.02. Conflicts of interest.

No employee of the District government shall engage in outside employment or private business activity or have any direct or indirect financial interest that conflicts or would appear to conflict with the fair, impartial, and objective performance of officially assigned duties and responsibilities.

(Mar. 3, 1979, D.C. Law 2-139, § 1802, 25 DCR 5740; Apr. 27, 2012, D.C. Law 19-124, § 501(c)(4), 59 DCR 1862.)

Prior Codifications. — 1981 Ed., § 1-619.2.

1973 Ed., § 1-348.2.

Emergency legislation. — For temporary (90 day) amendment of section, see § 401(c)(4) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012

(D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

§ 1-618.03. Ethics counselors; codification of advisory opinions.

(a) Each agency head shall appoint an employee to serve as the ethics counselor for the agency. Employees so appointed shall be required to undertake and satisfactorily complete such training as is necessary in order to adequately discharge their duties. The training program required by this subsection shall be developed by the Mayor after consultation with the District of Columbia Board of Education, the Board of Trustees of the University of the District of Columbia, and the District of Columbia Board of Elections and

Ethics. The Mayor shall appoint an ethics counselor for the District of Columbia.

(b) Ethics counselors shall issue advisory opinions concerning potential conflicts of interest which are presented by employees of the agency for resolution. The ethics counselor shall issue an advisory opinion within 15 days of receipt of an inquiry from an employee.

(c) The opinions authorized pursuant to this section shall be considered advisory opinions authorized under subsection (c) of § 1-1103.05, and shall be published in the District of Columbia Register.

(d) All oral communications between employees of an agency and ethics counselors shall be privileged communications, and may not form the basis for any civil or criminal liability. Ethics counselors shall not disclose the nature or contents of such communications, except in accordance with the provisions of subsection (c) of this section.

(e) The Mayor, the Chairman and each member of the Council, the President and each member of the Board of Education, members of boards and commissions as provided in subsection (a) of § 1-1106.02, employees in the Executive Service, and persons appointed under the authority of §§ 1-609.01 through 1-609.03 (and paid at a rate of GS-13 or above in the General Schedule or comparable compensation under subchapter XII of this chapter) or designated in § 1-609.08 shall not be included within the provisions of this subchapter for the purposes of enforcement. Enforcement of this subchapter and provisions of subchapter I of Chapter 11 of this title for persons included in this section shall be enforced by the District of Columbia Board of Elections and Ethics as provided in the subchapter I of Chapter 10 of this title and subchapter I of Chapter 11 of this title.

(Mar. 3, 1979, D.C. Law 2-139, § 1803, 25 DCR 5740; Apr. 23, 1980, D.C. Law 3-58, § 3, 27 DCR 963; Feb. 24, 1987, D.C. Law 6-177, § 3(z), 33 DCR 7241; Aug. 1, 1996, D.C. Law 11-152, § 302(y), 43 DCR 2978; April 27, 2012, D.C. Law 19-124, § 501(c)(5), 59 DCR 1862)

Prior Codifications. — 1981 Ed., § 1-619.3.

1973 Ed., § 1-348.3.

Emergency legislation. — For temporary (90 day) repeal of section, see § 401(c)(5) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 3-58. — Law 3-58 was introduced in Council and assigned Bill No. 3-158, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on January 22, 1980 and February 5, 1980, respectively. Signed by the Mayor on February 26,

1980, it was assigned Act No. 3-154 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-177. — For legislative history of D.C. Law 6-177, see Historical and Statutory Notes following § 1-601.02.

Legislative history of Law 11-152. — For legislative history of D.C. Law 11-152, see Historical and Statutory Notes following § 1-602.02.

Legislative history of Law 19-124. — For history of Law 19-124, see notes under § 1-122.

Editor's notes. — Repeal of § 3 of Law 6-177: Section 4(b) of D.C. Law 6-177 provided that the provisions of § 3 are repealed on the 1st day following the 36-month period after February 24, 1987.

Repeal of § 4(b) of Law 6-177: Section 3(b) of D.C. Law 8-74, effective March 15, 1990, provided that § 4(b) of D.C. Law 6-177 is repealed.

Section 601(k) of D.C. Law 19-124 provided: this act, except that § 501(c)(5) shall apply as
“(k) Title V shall apply as of the effective date of of October 1, 2012.”

§ 1-618.04. Prohibition on nepotism.

(a) A public official may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a position in the agency in which he or she is serving or over which he or she exercises jurisdiction or control, any individual who is a relative of the public official. An individual may not be appointed, employed, promoted, or advanced in or to a position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official who is serving in or exercising jurisdiction or control over the agency and is a relative of the individual.

(b)(1) An individual appointed, employed, promoted, or advanced in violation of this section is not entitled to pay and may not be compensated.

(2) A public official who appoints, employs, promotes, or advances, or advocates such appointment, employment, promotion, or advancement of any individual appointed in violation of this section, shall reimburse the District for any funds paid to such individual as a result of the individual's appointment, employment, promotion, or advancement.

(c) The Mayor may issue rules and regulations authorizing the temporary employment, in the event of emergencies resulting from natural disasters or similar unforeseen events or circumstances, of individuals whose employment would otherwise be prohibited by this section.

(d) For the purpose of this section, the term:

(1) “Public official” means an officer, employee, or any other individual in whom authority by law, rule, or regulation is vested, or to whom the authority has been delegated to select, appoint, employ, promote, reassign, demote, separate, or recommend individuals for any of these actions.

(2) “Relative” means, with respect to a public official, an individual who is related to the public official as a father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

(Mar. 3, 1979, D.C. Law 2-139, § 1804, as added Mar. 14, 2012, D.C. Law 19-115, § 2(k), 59 DCR 461.)

Cross references. — Mayor and Council members, coverage, see § 1-602.02.
Merit system, effective date provisions, see § 1-636.02.

Legislative history of Law 19-115. — For history of Law 19-115, see notes under § 1-608.01.

Subchapter XIX. Incentive Awards.

§ 1-619.01. Authority to grant awards.

(a) The Mayor and the District of Columbia Board of Education shall issue

rules and regulations authorizing the granting of cash and honorary awards to employees for their suggestions, inventions, superior accomplishments, length of service, and other meritorious efforts which contribute to the efficiency, economy, or otherwise improve the operation of the District government.

(b) The Mayor is authorized to make honorary awards to citizens who make significant contributions to the public good, or who submit ideas or inventions which materially benefit the District of Columbia.

(c) Awards to employees of the District government pursuant to this subchapter may include tangible items with a monetary value of no more than \$50 and time off without loss of pay or charge to leave.

(Mar. 3, 1979, D.C. Law 2-139, § 1901, 25 DCR 5740; June 10, 1998, D.C. Law 12-124, § 101(u)(1), 45 DCR 2464.)

Section references. — This section is referred to in § 1-619.02.

Prior Codifications. — 1981 Ed., § 1-620.1.

1973 Ed., § 1-349.1.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Editor's notes. — Applicability of § 101(u) of D.C. Law 12-124: Section 401(c) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(h), (l), (m), (n), (o)(2) through (5), (q), (r), (t), (u), (w), and (y) of the act shall apply as of October 21, 1998. Extension of Retirement Awards Program Pursuant to Sections 1902.1(a)(6) and 1904.7 of Chapter 19, Incentive Awards, of Title 6 of the District of Columbia, see Mayor's Order 2010-38, February 26, 2010 (57 DCR 1788).

§ 1-619.02. Limitation upon awards.

A cash award authorized under the provisions of § 1-619.01(a) may not exceed \$5,000 or 10% of the employee's scheduled rate of basic pay, whichever is greater; except, that in the case of suggestions or inventions resulting in a tangible monetary savings or increased revenues, an award shall be based on a percentage formula of the estimated savings or revenues, not to exceed \$25,000. No cash award shall be granted to an employee without a written determination by the Mayor or the employee's independent personnel authority that set forth the specific reasons the award is justified. The written determination shall be forwarded to the Council for its information within 30 days of its execution.

(Mar. 3, 1979, D.C. Law 2-139, § 1902, 25 DCR 5740; Mar. 24, 1990, D.C. Law 8-97, § 3(d), 37 DCR 1046; June 10, 1998, D.C. Law 12-124, § 101(u)(2), 45 DCR 2464.)

Prior Codifications. — 1981 Ed., § 1-620.2.

1973 Ed., § 1-349.2.

Emergency legislation. — For temporary addition of § 1-620.3 1981 Ed., see § 2(b) of the Comprehensive Merit Personnel Act Pilot Program Emergency Amendment Act of 1997 (D.C. Act 12-120, August 1, 1997, 44 DCR 4643), and see § 2(b) of the Comprehensive Merit Person-

nel Act Pilot Program Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-178, October 30, 1997, 44 DCR 6946).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 8-97. — Law 8-97 was introduced in Council and assigned

Bill No. 8-267, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 19, 1989, and January 16, 1990, respectively. Signed by the Mayor on January 26, 1990, it was assigned Act No. 8-149 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Editor's notes. — Applicability of § 101(u) of D.C. Law 12-124: See Historical and Statutory Notes following § 1-619.01.

§ 1-619.03. Personnel authority pilot programs.

(a) Notwithstanding any other provision of this subchapter, or any other provision of law or regulation, and consistent with § 1-204.22 the Mayor may implement pilot personnel programs in the area of incentive awards as related to performance, including gainsharing. Pilot programs may be established during any control period as defined in § 47-393, to help ensure successful implementation of the transformation of the District of Columbia government workforce.

(b) The Mayor may issue rules and regulations to implement these programs.

(Mar. 3, 1979, D.C. Law 2-139, § 1903, as added June 10, 1998, D.C. Law 12-124, § 101(u)(3), 45 DCR 2464.)

Cross references. — Mayor and Council members, coverage, see § 1-602.02.

Merit system, effective date provisions, see § 1-636.02.

Prior Codifications. — 1981 Ed., § 1-620.3.

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 2(b) of Comprehensive Merit Personnel Act Pilot Program Temporary Amendment Act of 1997 (D.C. Law 12-47, April 27, 1998, law notification 45 DCR 1508).

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.03.

Construction of Law 12-124. — Section 301 of D.C. Law 12-124 provided that nothing

in the act shall be construed as superseding the provisions of the National Capital Revitalization and Self-Government Improvement Act of 1997, approved August 5, 1997 (Public Law 105-33; 111 Stat. 712), except that § 47-395.04(b)(3) is expressly superseded. Further, nothing in the act shall be construed as superseding the provisions of § 47-391.01 et seq. or of § 164 of the District of Columbia Appropriations Act, 1998, approved November 19, 1997 (Public Law 105-100; 111 Stat. 2160).

Editor's notes. — Applicability of § 101(u) of D.C. Law 12-124: Section 401(c) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(h), (l), (m), (n), (o)(2) through (5), (q), (r), (t), (u), (w), and (y) of the act shall apply as of October 21, 1998.

Subchapter XX. Safety and Health.

§ 1-620.01. Policy.

It shall be the policy of the District of Columbia government to establish and maintain a comprehensive occupational safety and health management program that ensures, to the maximum extent possible, a safe and healthful work environment for employees and general public users of District government facilities, and for the protection of District government property.

(Mar. 3, 1979, D.C. Law 2-139, § 2001, 25 DCR 5740.)

Prior Codifications. — 1981 Ed., § 1-621.1. legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.
 1973 Ed., § 1-350.1.
Legislative history of Law 2-139. — For

§ 1-620.02. Extent of coverage.

The occupational safety and health management program shall encompass all aspects of the total work environment throughout the District government, and shall include, but not be limited to:

- (1) Employee safety and health, inclusive of physical welfare at the work site and environmental control of occupational diseases;
- (2) Fire safety;
- (3) Motor vehicle safety;
- (4) Safety of nonemployee users of city facilities and services;
- (5) Contractor safety; and
- (6) Protection of District government property.

(Mar. 3, 1979, D.C. Law 2-139, § 2002, 25 DCR 5740.)

Prior Codifications. — 1981 Ed., § 1-621.2. legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.
 1973 Ed., § 1-350.2.
Legislative history of Law 2-139. — For

§ 1-620.03. Minimal standards applicable.

Safe and healthful conditions shall be provided all employees of the District government in accordance with applicable standards, codes, rules and regulations, and shall be consistent with the occupational safety and health standards promulgated by the United States Department of Labor under the provisions of the Occupational Safety and Health Act of 1970, as amended (84 Stat. 1590), and applicable codes, rules and regulations including, but not limited to:

- (1) The D.C. Occupational Safety and Health Board Occupational Safety and Health Standards (11B D.C.R.R.);
- (2) The Building Code approved pursuant to the Construction Codes Approval and Amendments Act of 1986;
- (3) The Electrical Code approved pursuant to the Construction Codes Approval and Amendments Act of 1986;
- (4) The Fire Prevention Code approved pursuant to the Construction Codes Approval and Amendments Act of 1986; and
- (5) The Plumbing Code approved pursuant to the Construction Codes Approval and Amendments Act of 1986.

(Mar. 3, 1979, D.C. Law 2-139, § 2003, 25 DCR 5740; Mar. 21, 1987, D.C. Law 6-216, § 13(a), 34 DCR 1072.)

Prior Codifications. — 1981 Ed., § 1-621.3. legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.
 1973 Ed., § 1-350.3.
Legislative history of Law 2-139. — For **Legislative history of Law 6-216.** — Law

6-216 was introduced in Council and assigned Bill No. 6-500, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 18, 1986 and December 16, 1986, respectively. Signed by the Mayor on February 2, 1987, it was assigned Act No. 6-279 and transmitted to both Houses of Congress for its review.

References in text. — The “Construction Codes Approval and Amendments Act of 1986,” referred to throughout this section, is D.C. Law 6-216.

The D.C. Occupational Safety and Health Board Occupational Safety and Health Standards (11B D.C.R.R.), referred to in (1), are now found in 24 DCMR, Chapters 30-32.

§ 1-620.04. Authority of Mayor.

(a) The Mayor shall issue rules and regulations consistent with this subchapter and such laws of the federal government and the District of Columbia as they may, from time to time, be amended for the establishment, operation and administration of the District government’s occupational safety and health management program. Programs and procedures developed under the authority of this subchapter are appropriate matters for collective bargaining with labor organizations.

(b) The Mayor shall ensure, through audits and inspections, compliance with this subchapter and the rules and regulations issued pursuant thereto, and shall direct that appropriate remedial or corrective action be taken when it is determined that noncompliance has occurred.

(Mar. 3, 1979, D.C. Law 2-139, § 2004, 25 DCR 5740.)

Prior Codifications. — 1981 Ed., § 1-621.4.

1973 Ed., § 1-350.4.

Legislative history of Law 2-139. — For

legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

§ 1-620.05. Employee rights.

Employees shall be protected against penalty or reprisal for reporting an unsafe or unhealthful working condition or practice, or assisting in the investigation of such condition or practice.

(Mar. 3, 1979, D.C. Law 2-139, § 2005, 25 DCR 5740.)

Prior Codifications. — 1981 Ed., § 1-621.5.

1973 Ed., § 1-350.5.

Legislative history of Law 2-139. — For

legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

§ 1-620.06. Training.

The Mayor shall provide for the establishment and supervision of programs, as may be necessary to comply with the provisions of this subchapter, for the education and training of employees in the recognition, avoidance, and prevention of unsafe and unhealthful working conditions and practices.

(Mar. 3, 1979, D.C. Law 2-139, § 2006, 25 DCR 5740.)

Prior Codifications. — 1981 Ed., § 1-621.6.

1973 Ed., § 1-350.6.

Legislative history of Law 2-139. — For

legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

§ 1-620.07. Health services.

The Mayor shall establish an employee health services program which shall provide for the following: (1) Treatment of on-the-job injuries and illness requiring emergency treatment; (2) pre-employment and other physical examinations, including fitness-for-duty examinations; (3) a counseling program for “troubled employees”; and (4) preventive programs relating to health. In developing and implementing a health services program consistent with the provisions of this subchapter, maximum use shall be made of existing District government medical and health services facilities, resources and expertise.

(Mar. 3, 1979, D.C. Law 2-139, § 2007, 25 DCR 5740.)

Prior Codifications. — 1981 Ed., § 1-621.7.

1973 Ed., § 1-350.7.

Legislative history of Law 2-139. — For

legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

§ 1-620.08. Records.

Each agency shall keep adequate records of all occupational accidents and illnesses occurring within the agency for proper evaluation and necessary corrective action and make statistical or other reports as the Mayor may require by rules and regulations.

(Mar. 3, 1979, D.C. Law 2-139, § 2008, 25 DCR 5740.)

Prior Codifications. — 1981 Ed., § 1-621.8.

1973 Ed., § 1-350.8.

Emergency legislation. — For temporary addition of § 1-621.11 1981 Ed., see § 2 of the Testing of District Government Drivers of Commercial Motor Vehicles for Alcohol and Controlled Substances Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-294, February 27, 1998, 45 DCR 1762).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Mayor's Orders. — Testing of District Government Drivers of Commercial Motor Vehicles for Alcohol and Controlled Substances: See Mayor's Order 96-139, September 17, 1996 (43 DCR 5287).

Subchapter XX-A. Testing of Drivers of Commercial Motor Vehicles for the Presence of Alcohol and Controlled Substances.

§ 1-620.11. General.

In compliance with federal regulations issued pursuant to 49 U.S.C. § 31306, the Mayor and each personnel authority shall adopt and administer a program and issue rules for conducting pre-employment, reasonable suspicion, random, post-accident, return-to-duty, and follow-up testing of employees who are employed as drivers of commercial motor vehicles, or who are candidates for such employment, for the use of alcohol and controlled substances.

(Mar. 3, 1979, D.C. Law 2-139, § 2051, as added June 10, 1998, D.C. Law 12-124, § 101(v), 45 DCR 2464.)

Prior Codifications. — 1981 Ed., § 1-621.51.

Temporary Addition of Section. — For temporary (225 day) addition, see § 2 of the Testing of District Government Drivers of Commercial Motor Vehicles for Alcohol and Controlled Substances Temporary Amendment Act of 1996 (D.C. Law 11-204, April 9, 1997, law notification 44 DCR 2399).

For temporary (225 day) addition of section, see § 2 of the Testing of District Government Drivers of Commercial Motor Vehicles for Alcohol and Controlled Substances Temporary Amendment Act of 1998 (D.C. Law 12-96, April 30, 1998, law notification 45 DCR 2787).

Emergency legislation. — For temporary addition of this section, comprising subchapter XXI-A of Chapter 6 of Title 1, see § 2 of the Testing of District Government Drivers of Commercial Motor Vehicles for Alcohol and Controlled Substances Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-13, March 3, 1997, 44 DCR 1747), § 2 of the Testing of District Government Drivers of Commercial Motor Vehicles for Alcohol and Controlled Substances Emergency Amendment Act of 1997 (D.C. Act 12-248, January 13, 1998, 45 DCR 770), and § 2 of the Testing of District Government Drivers of Commercial Motor Ve-

hicles for Alcohol and Controlled Substances Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-294, February 27, 1998, 45 DCR 1762).

Legislative history of Law 12-124. — Law 12-124, the “Omnibus Personnel Reform Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-44, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on February 3, 1998, and March 17, 1998, respectively. Signed by the Mayor on April 1, 1998, it was assigned Act No. 12-326 and transmitted to both Houses of Congress for its review. D.C. Law 12-124 became effective on June 10, 1998.

Construction of Law 12-124. — Section 301 of D.C. Law 12-124 provided that nothing in the act shall be construed as superseding the provisions of the National Capital Revitalization and Self-Government Improvement Act of 1997, approved August 5, 1997 (Public Law 105-33; 111 Stat. 712), except that § 47-395.04(b)(3) is expressly superseded. Further, nothing in the act shall be construed as superseding the provisions of § 47-391.01 et seq. or of § 164 of the District of Columbia Appropriations Act, 1998, approved November 19, 1997 (Public Law 105-100; 111 Stat. 2160).

Subchapter XX-B. Mandatory Drug and Alcohol Testing of Certain Employees of the Department of Human Services and the Commission on Mental Health Services.

§ 1-620.21. Definitions.

For the purposes of this subchapter, the term:

(1) “Applicant” means a person who has filed a written employment application form to work for the Department of Human Services or the Department of Mental Health or has been tentatively selected for employment by either the Department of Human Services or the Department of Mental Health to work as a high potential risk employee.

(2) Repealed.

(3) Repealed.

(4) “High potential risk employee” means any Department of Mental Health or Department of Human Services employee who has resident care or custody responsibilities in a secured facility or who works in a residential facility.

(5) “Post-accident employee” means any Department of Mental Health or Department of Human Services employee who, while on duty, was involved in a vehicular or other type of accident resulting in personal injury or property damage, or both.

(6) "Probable cause" means a reasonable belief by a supervisor that an employee is under the influence of an illegal substance or alcohol such that the employee's ability to perform his or her job is impaired.

(7) "Probable cause referral" means a referral, based on probable cause, for testing by the Department of Human Services or the Department of Mental Health for drug or alcohol use.

(8) "Random testing" means drug or alcohol testing taken by a Department of Mental Health or Department of Human Services employee at an unspecified time for the purposes of determining whether any Department of Mental Health or Department of Human Services employee has used drugs or alcohol and as a result is unable to satisfactorily perform his or her employment duties.

(9) "Residential facility" means a facility that provides a supervised and sheltered living environment for individuals who need such an environment because of their mental, familial, social, or other circumstances.

(10) "Secured facility" means a hospital or institution that is:

(A) Leased, or owned by the District government;

(B) Operated by the District government; and

(C) Equipped and qualified to provide in-resident or in-patient care to detained or committed youth or persons with mental illness.

(Mar. 3, 1979, D.C. Law 2-139, § 2021, as added, Apr. 13, 1999, D.C. Law 12-227, § 2, 46 DCR 502; Dec. 18, 2001, D.C. Law 14-56, § 116(a)(3), 48 DCR 7674; Apr. 24, 2007, D.C. Law 16-305, § 4, 53 DCR 6198.)

Prior Codifications. — 1981 Ed., § 1-621.61.

Effect of amendments. — D.C. Law 14-56 substituted "Department of Human Services or the Department of Mental Health" for "Department or the Commission" wherever it appeared; substituted "Department of Mental Health or Department of Human Services" for "Department or Commission" wherever it appeared; and, repealed pars. (2) and (3) which had read:

"(2) 'Commission' means the Commission on Mental Health Services.

"(3) 'Department' means the Department of Human Services."

D.C. Law 16-305, in par. (10)(C), substituted "with" for "suffering from".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 16(a)(3) of Department of Mental Health Establishment Temporary Amendment Act of 2001 (D.C. Law 14-51, October 30, 2001, law notification 48 DCR 10807).

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 2 of the Department of Human Services and Commission on Mental Health Services Mandatory Employee Drug and Alcohol Testing Temporary Amendment Act of 1998 (D.C. Law 12-191, March 26, 1999, law notification 46 DCR 3417).

Emergency legislation. — For temporary addition of subchapter, see § 2 of the Department of Human Services and Commission on Mental Health Services Mandatory Employee Drug and Alcohol Testing Emergency Amendment Act of 1998 (D.C. Act 12-430, July 29, 1998, 45 DCR 5727), § 2 of the Department of Human Services and Commission on Mental Health Services Mandatory Drug and Alcohol Testing Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-504, October 27, 1998, 45 DCR 8127), and § 2 of the Department of Human Services and Commission on Mental Health Services Mandatory Employee Drug and Alcohol Testing and Department of Corrections Conforming Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-599, January 20, 1998, 46 DCR 1147).

For temporary (90 day) amendment of section, see § 16(a)(3) of Department of Mental Health Establishment Emergency Amendment Act of 2001 (D.C. Act 14-55, May 2, 2001, 48 DCR 4390).

For temporary (90 day) amendment of section, see § 16(a)(3) of Department of Mental Health Establishment Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-101, July 23, 2001, 48 DCR 7123).

For temporary (90 day) amendment of section, see § 116(a)(3) of Mental Health Service

Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

Legislative history of Law 12-227. — Law 12-227, the “Department of Human Services and Commission on Mental Health Services Mandatory Employee Drug and Alcohol Testing and Department of Corrections Conforming Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-625, which was referred to the Committee on Human Ser-

vices. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998 respectively. Signed by the Mayor on December 11, 1998, it was assigned Act No. 12-548 and transmitted to both Houses of Congress for its review. D.C. Law 12-227 became effective on April 13, 1999.

Legislative history of Law 14-56. — For Law 14-56, see notes following § 1-603.01.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 1-307.02.

§ 1-620.22. Employee testing.

(a) The following Department of Mental Health and Department of Human Services employees and prospective employees shall be tested for drug and alcohol use:

(1) Applicants for positions that would qualify them as high potential risk employees;

(2) Employees who have had a probable cause referral;

(3) Post-accident employees, as soon as reasonably possible after an accident; and

(4) High potential risk employees.

(b) Only high potential risk employees shall be subject to random testing.

(c) All employees of the Department of Mental Health and Department of Human Services shall be given written notice, issued at least 30 days before the implementation of a drug and alcohol testing program, that the Department of Mental Health and Department of Human Services will implement a drug and alcohol testing program.

(d) No employee may be tested for drug or alcohol use prior to receiving the notice required by subsection (c) of this section.

(e) Conditions giving rise to probable cause must be observed and documented. Supervisors shall be trained in substance abuse recognition and shall receive a second opinion from another supervisor prior to making a probable cause referral.

(f) An employee shall be given one opportunity to seek treatment following a positive test result.

(g) The Department of Mental Health and the Department of Human Services shall procure the services of a contractor to perform the tests required by this subchapter.

(h) All testing conducted by a vendor shall be implemented pursuant to this subchapter.

(Mar. 3, 1979, D.C. Law 2-139, § 2022, as added, Apr. 13, 1999, D.C. Law 12-227, § 2, 46 DCR 502; Dec. 18, 2001, D.C. Law 14-56, § 116(a)(4), 48 DCR 7674.)

Prior Codifications. — 1981 Ed., § 1-621.62.

Effect of amendments. — D.C. Law 14-56, in subssecs. (a) and (c), substituted “Department

of Mental Health and Department of Human Services” for “Department and Commission” wherever it appeared; and, in subsec. (g), substituted “Department of Mental Health and the

Department of Human Services" for "Department and the Commission" wherever it appeared.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 16(a)(4) of Department of Mental Health Establishment Temporary Amendment Act of 2001 (D.C. Law 14-51, October 30, 2001, law notification 48 DCR 10807).

Emergency legislation. — For temporary addition of subchapter, see note to § 1-620.21.

For temporary (90 day) amendment of section, see § 16(a)(4) of Department of Mental Health Establishment Emergency Amendment Act of 2001 (D.C. Act 14-55, May 2, 2001, 48 DCR 4390).

For temporary (90 day) amendment of section, see § 16(a)(4) of Department of Mental Health Establishment Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-101, July 23, 2001, 48 DCR 7123).

For temporary (90 day) amendment of section, see § 116(a)(4) of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

Legislative history of Law 12-191. — For legislative history of D.C. Law 12-191, see Historical and Statutory Notes following § 1-620.21.

Legislative history of Law 12-227. — For legislative history of D.C. Law 12-227, see Historical and Statutory Notes following § 1-620.21.

Legislative history of Law 14-56. — For Law 14-56, see notes following § 1-603.01.

Editor's notes. — Temporary addition of subchapter: See Historical and Statutory Notes following § 1-621.61.

§ 1-620.23. Testing methodology.

(a) Testing shall be performed by an outside contractor. The contractor shall be certified by the United States Department of Health and Human Services ("HHS") to perform job related drug and alcohol forensic testing.

(b)(1) For random testing, the contractor shall come on-site to Department of Mental Health or Department of Human Services institutions.

(2) The contractor shall collect urine specimens and split the samples.

(c) The contractor shall perform enzyme-multiplied-immunoassay technique ("EMIT") testing on one sample and store the other sample. Any positive EMIT test shall be confirmed by the contractor using gas chromatography/mass spectrometry ("GCMS") methodology.

(d) Any Department of Mental Health or Department of Human Services employee found to have a confirmed positive urinalysis shall be notified of the result. The employee may then authorize the stored sample to be sent to another HHS certified laboratory of his or her choice, at his or her expense, for secondary GCMS confirmation.

(e) Probable cause and post-accident testing shall follow the same procedures set forth in subsections (a) through (d) of this section. In such cases, the employee shall be escorted by a supervisor to the contractor's test site for specimen collection or breathalyzer.

(f) A breathalyzer shall be deemed positive by the Department of Mental Health's or Department of Human Services' testing contractor if the contractor determines that 1 milliliter of the employee's breath (consisting of substantially alveolar air) contains .38 micrograms or more of alcohol.

(Mar. 3, 1979, D.C. Law 2-139, § 2023, as added, Apr. 13, 1999, D.C. Law 12-227, § 2, 46 DCR 502; Dec. 18, 2001, D.C. Law 14-56, § 116(a)(5), 48 DCR 7674.)

Prior Codifications. — 1981 Ed., § 1-621.63.

Effect of amendments. — D.C. Law 14-56, in subsecs. (b)(1) and (d), substituted "Depart-

ment of Mental Health or Department of Human Services" for "Department or Commission" wherever it appeared; and, in subsec. (g), substituted "Department of Mental Health's and Department of Human Services" for "Department's and Commission's" wherever it appeared.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 16(a)(5) of Department of Mental Health Establishment Temporary Amendment Act of 2001 (D.C. Law 14-51, October 30, 2001, law notification 48 DCR 10807).

Emergency legislation. — For temporary addition of subchapter, see note to § 1-620.21.

For temporary (90 day) amendment of section, see § 16(a)(5) of Department of Mental Health Establishment Emergency Amendment Act of 2001 (D.C. Act 14-55, May 2, 2001, 48 DCR 4390).

For temporary (90 day) amendment of section, see § 16(a)(5) of Department of Mental

Health Establishment Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-101, July 23, 2001, 48 DCR 7123).

For temporary (90 day) amendment of section, see § 116(a)(5) of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

Legislative history of Law 12-191. — For legislative history of D.C. Law 12-191, see Historical and Statutory Notes following § 1-620.21.

Legislative history of Law 12-227. — For legislative history of D.C. Law 12-227, see Historical and Statutory Notes following § 1-620.21.

Legislative history of Law 14-56. — For Law 14-56, see notes following § 1-603.01.

Editor's notes. — Temporary addition of subchapter: See Historical and Statutory Notes following § 1-620.21.

§ 1-620.24. Implied consent of employees who operate motor vehicles.

Any Department of Mental Health or Department of Human Services employee who operates a motor vehicle in the performance of his or her employment within the District of Columbia shall be deemed to have given his or her consent, subject to the provisions of this subchapter, to the testing of the employee's urine or breath, for the purpose of determining drug or alcohol content, whenever a supervisor has the probable cause or a police officer arrests such employee for a violation of § 50-2201.05 or has reasonable grounds to believe such employee to have been operating or in physical control of a motor vehicle within the District while that employee's alcohol concentration was 0.08 grams or more per 210 liters of breath, or while under the influence of an intoxicating liquor or any drug or any combination thereof, or while the employee's ability to operate a motor vehicle was impaired by the consumption of intoxicating liquor.

(Mar. 3, 1979, D.C. Law 2-139, § 2024, as added, Apr. 13, 1999, D.C. Law 12-227, § 2, 46 DCR 502; Dec. 18, 2001, D.C. Law 14-56, § 116(a)(6), 48 DCR 7674; Mar. 2, 2007, D.C. Law 16-195, § 4(a), 53 DCR 8675.)

Prior Codifications. — 1981 Ed., § 1-621.64.

Effect of amendments. — D.C. Law 14-56 substituted "Department of Mental Health or Department of Human Services" for "Department or Commission".

D.C. Law 16-195 substituted "alcohol concentration was 0.08 grams or more per 210 liters of breath" for "breath contained .08% or more, by weight, of alcohol".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 16(a)(6) of Department of Mental Health

Establishment Temporary Amendment Act of 2001 (D.C. Law 14-51, October 30, 2001, law notification 48 DCR 10807).

Emergency legislation. — For temporary addition of subchapter, see note to § 1-620.21.

For temporary (90 day) amendment of section, see § 16(a)(6) of Department of Mental Health Establishment Emergency Amendment Act of 2001 (D.C. Act 14-55, May 2, 2001, 48 DCR 4390).

For temporary (90 day) amendment of section, see § 16(a)(6) of Department of Mental Health Establishment Congressional Review

Emergency Amendment Act of 2001 (D.C. Act 14-101, July 23, 2001, 48 DCR 7123).

For temporary (90 day) amendment of section, see § 116(a)(6) of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

For temporary (90 day) amendment of section, see § 4(a)(1) of Anti-Drunk Driving Clarification Emergency Amendment Act of 2006 (D.C. Act 16-469, July 31, 2006, 53 DCR 6764).

For temporary (90 day) amendment of section, see § 4(a) of Anti-Drunk Driving Clarification Second Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-518, October 27, 2006, 53 DCR 9104).

For temporary (90 day) amendment of section, see § 4(a) of Anti-Drunk Driving Clarification Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-6, January 16, 2007, 54 DCR 1452).

Legislative history of Law 12-191. — For legislative history of D.C. Law 12-191, see His-

torical and Statutory Notes following § 1-620.21.

Legislative history of Law 12-227. — For legislative history of D.C. Law 12-227, see Historical and Statutory Notes following § 1-620.21.

Legislative history of Law 14-56. — For Law 14-56, see notes following § 1-603.01.

Legislative history of Law 16-195. — Law 16-195, the “Anti-Drunk Driving Clarification Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-463, which was referred to the Committee on Public Works and Environment. The Bill was adopted on first and second readings on July 11, 2006, and October 3, 2006, respectively. Signed by the Mayor on October 18, 2006, it was assigned Act No. 16-488 and transmitted to both Houses of Congress for its review. D.C. Law 16-195 became effective on March 2, 2007.

Editor's notes. — Temporary addition of subchapter: See Historical and Statutory Notes following § 1-620.21.

§ 1-620.25. Procedure and employee impact.

(a) The drug and alcohol testing policy shall be issued in writing in advance of program implementation to inform employees and allow them the opportunity to seek treatment. An employee shall be allowed only one opportunity to seek treatment following his or her first positive test result. Thereafter, any confirmed positive drug test, or positive breathalyzer test, or a refusal to submit to a drug or breathalyzer test shall be grounds for termination of employment.

(b) The program shall cover all Department of Mental Health and Department of Human Services employees, including management, and shall be implemented as a single program of each Department.

(c) The results of any random test conducted pursuant to this subchapter may not be turned over to any law enforcement agency without the employee's written consent.

(Mar. 3, 1979, D.C. Law 2-139, § 2025, as added, Apr. 13, 1999, D.C. Law 12-227, § 2, 46 DCR 502; Dec. 18, 2001, D.C. Law 14-56, § 116(a)(7), 48 DCR 7674.)

Prior Codifications. — 1981 Ed., § 1-621.65.

Effect of amendments. — D.C. Law 14-56 rewrote subsec. (b) which had read as follows: “(b) The program shall cover all Department and Commission employees, including management, and shall be implemented as a single program of the Department and a single program of the Commission.”

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 16(a)(7) of Department of Mental Health

Establishment Temporary Amendment Act of 2001 (D.C. Law 14-51, October 30, 2001, law notification 48 DCR 10807).

Emergency legislation. — For temporary addition of subchapter, see note to § 1-620.21.

For temporary (90 day) amendment of section, see § 16(a)(7) of Department of Mental Health Establishment Emergency Amendment Act of 2001 (D.C. Act 14-55, May 2, 2001, 48 DCR 4390).

For temporary (90 day) amendment of section, see § 16(a)(7) of Department of Mental

Health Establishment Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-101, July 23, 2001, 48 DCR 7123).

For temporary (90 day) amendment of section, see § 116(a)(7) of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

Legislative history of Law 12-191. — For legislative history of D.C. Law 12-191, see Historical and Statutory Notes following § 1-620.21.

Legislative history of Law 12-227. — For legislative history of D.C. Law 12-227, see Historical and Statutory Notes following § 1-620.21.

Legislative history of Law 14-56. — For Law 14-56, see notes following § 1-603.01.

Editor's notes. — Temporary addition of subchapter: See Historical and Statutory Notes following § 1-620.21.

Subchapter XX-C. Mandatory Drug and Alcohol Testing for Certain Employees Who Serve Children.

§ 1-620.31. Definitions.

For the purposes of this subchapter, the term:

(1) "Applicant" means any person who has filed any written employment application forms to work as a District employee, or has been tentatively selected for employment.

(2) "Child" means an individual 12 years of age and under.

(3) "District employee" means a person employed by the District of Columbia government.

(4) "Drug" means an unlawful drug and does not include over-the-counter prescription medications.

(5) "Employee" means any person employed in a position for which he or she is paid for services on any basis.

(6) "Post-accident employee" means an employee of the District of Columbia, who, while on duty, is involved in a vehicular or other type of accident resulting in personal injury or property damage, or both, in which the cause of the accident could reasonably be believed to have been the result, in whole or in part, from the use of drugs or alcohol on the part of the employee.

(7) "Probable cause" or "reasonable suspicion" means a reasonable belief by a supervisor that an employee in a safety-sensitive position is under the influence of an illegal drug or alcohol to the extent that the employee's ability to perform his or her job is impaired.

(8) "Random testing" means drug or alcohol testing conducted on an District employee in a safety-sensitive position at an unspecified time for purposes of determining whether any District employee subject to drug or alcohol testing has used drugs or alcohol and, as a result, is unable to satisfactorily perform his or her employment duties.

(9) "Reasonable suspicion referral" means referral of an employee in a safety-sensitive position for testing by the District for drug or alcohol use.

(10) "Safety-sensitive position" means:

(A) Employment in which the District employee has direct contact with children or youth;

(B) Is entrusted with the direct care and custody of children or youth; and

(C) Whose performance of his or her duties in the normal course of employment may affect the health, welfare, or safety of children or youth.

(11) "Youth" means an individual between 13 and 17 years of age, inclusive.

(Mar. 3, 1979, D.C. Law 2-139, § 2031, as added Apr. 13, 2005, D.C. Law 15-353, § 102, 52 DCR 2331.)

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 102 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2002 (D.C. Law 14-164, June 25, 2002, law notification 49 DCR 6500).

For temporary (225 day) addition of section, see § 102 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2003 (D.C. Law 15-2, May 3, 2003, law notification 50 DCR 3782).

For temporary (225 day) addition of section, see § 102 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2004 (D.C. Law 15-117, March 30, 2004, law notification 51 DCR 3804).

For temporary (225 day) addition of section, see § 102 of the Child and Youth, Safety and Health Omnibus Second Temporary Amendment Act of 2004 (D.C. Law 15-319, on April 8, 2005, law notification 52 DCR 4708).

Emergency legislation. — For temporary (90 day) addition, see § 102 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2002 (D.C. Act 14-310, March 26, 2002, 49 DCR 3420).

For temporary (90 day) addition, see § 102 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2003 (D.C. Act 15-3, January 22, 2003, 50 DCR 1426).

For temporary (90 day) addition, see § 102 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-71, April 16, 2003, 50 DCR 3593).

For temporary (90 day) addition, see § 102 of Child and Youth, Safety and Health Omnibus Second Emergency Amendment Act of 2003 (D.C. Act 15-279, December 18, 2003, 51 DCR 60).

For temporary (90 day) addition, see § 102 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-407, March 18, 2004, 51 DCR 3659).

For temporary (90 day) addition, see § 102 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2004 (D.C. Act 15-630, November 30, 2004, 52 DCR 1143).

For temporary (90 day) addition, see § 102 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-30, February 17, 2005, 52 DCR 2993).

Legislative history of Law 15-353. — Law 15-353, the "Child and Youth, Safety and Health Omnibus Amendment Act of 2004", was introduced in Council and assigned Bill No. 15-607 which was referred to the Committees on Human Services, Finance and Revenue, and Education, Libraries and Recreation. The Bill was adopted on first and second readings on December 7, 2004, and December 21, 2004, respectively. Signed by the Mayor on January 19, 2005, it was assigned Act No. 15-759 and transmitted to both Houses of Congress for its review. D.C. Law 15-353 became effective on April 13, 2005.

§ 1-620.32. Employee testing.

(a) The following individuals shall be tested by the District government for drug and alcohol use:

- (1) Applicants for employment in safety-sensitive positions;
- (2) Those District employees who have had a reasonable suspicion referral; and
- (3) Post-accident District employees, as soon as reasonably possible after the accident.

(b) The District shall subject District employees in safety-sensitive positions to random testing, unless a District agency has additional requirements for drug and alcohol testing of its employees, in which case the stricter requirements shall apply.

(c) Supervisors shall be trained in substance abuse recognition and shall receive a second opinion from another supervisor prior to making a reasonable suspicion referral.

(d) District employees shall be given written notice that the District is implementing a drug and alcohol testing program at least 30 days in advance of implementation of the program. Upon receipt of a written notice of the program, each employee shall be given one opportunity to seek treatment, if he or she has a drug or alcohol problem.

(e) No employee may be tested under this subchapter for drug or alcohol use prior to receiving the notice required by subsection (d) of this section.

(f) Following the issuance of the 30-day written notice required by subsection (d) of this section, the Mayor shall procure a testing vendor and testing shall be implemented as described in this subchapter.

(Mar. 3, 1979, D.C. Law 2-139, § 2032, as added Apr. 13, 2005, D.C. Law 15-353, § 102, 52 DCR 2331.)

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 102 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2002 (D.C. Law 14-164, June 25, 2002, law notification 49 DCR 6500).

For temporary (225 day) addition of section, see § 102 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2003 (D.C. Law 15-2, May 3, 2003, law notification 50 DCR 3782).

For temporary (225 day) addition of section, see § 102 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2004 (D.C. Law 15-117, March 30, 2004, law notification 51 DCR 3804).

For temporary (225 day) addition of section, see § 102 of the Child and Youth, Safety and Health Omnibus Second Temporary Amendment Act of 2004 (D.C. Law 15-319, on April 8, 2005, law notification 52 DCR 4708).

Emergency legislation. — For temporary (90 day) addition, see § 102 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2002 (D.C. Act 14-310, March 26, 2002, 49 DCR 3420).

For temporary (90 day) addition, see § 102 of Child and Youth, Safety and Health Omnibus

Emergency Amendment Act of 2003 (D.C. Act 15-3, January 22, 2003, 50 DCR 1426).

For temporary (90 day) addition, see § 102 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-71, April 16, 2003, 50 DCR 3593).

For temporary (90 day) addition, see § 102 of Child and Youth, Safety and Health Omnibus Second Emergency Amendment Act of 2003 (D.C. Act 15-279, December 18, 2003, 51 DCR 60).

For temporary (90 day) addition, see § 102 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-407, March 18, 2004, 51 DCR 3659).

For temporary (90 day) addition, see § 102 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2004 (D.C. Act 15-630, November 30, 2004, 52 DCR 1143).

For temporary (90 day) addition, see § 102 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-30, February 17, 2005, 52 DCR 2993).

Legislative history of Law 15-353. — For Law 15-353, see notes following § 1-620.31.

§ 1-620.33. Motor vehicle operators.

Any District government employee who operates a motor vehicle in the performance of his or her employment within the District of Columbia shall be deemed to have given his or her consent, subject to the conditions in this subchapter, to the testing of the employee's urine or breath for the purpose of determining drug or alcohol content whenever a supervisor has probable cause or a police officer arrests such person for a violation of the law and has reasonable grounds to believe such person to have been operating or in physical control of a motor vehicle within the District while that person's

alcohol concentration was 0.08 grams or more per 210 liters of breath, or while under the influence of an intoxicating liquor or any drug or combination thereof, or while that person's ability to operate a motor vehicle is impaired by the consumption of intoxicating liquor.

(Mar. 3, 1979, D.C. Law 2-139, § 2033, as added Apr. 13, 2005, D.C. Law 15-353, § 102, 52 DCR 2331; Mar. 2, 2007, D.C. Law 16-195, § 4(b), 53 DCR 8675.)

Effect of amendments. — D.C. Law 16-195 substituted "alcohol concentration was 0.08 grams or more per 210 liters of breath" for "breath contains .08% or more, by weight, of alcohol".

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 102 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2002 (D.C. Law 14-164, June 25, 2002, law notification 49 DCR 6500).

For temporary (225 day) addition of section, see § 102 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2003 (D.C. Law 15-2, May 3, 2003, law notification 50 DCR 3782).

For temporary (225 day) addition of section, see § 102 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2004 (D.C. Law 15-117, March 30, 2004, law notification 51 DCR 3804).

For temporary (225 day) addition of section, see § 102 of the Child and Youth, Safety and Health Omnibus Second Temporary Amendment Act of 2004 (D.C. Law 15-319, on April 8, 2005, law notification 52 DCR 4708).

Emergency legislation. — For temporary (90 day) addition, see § 102 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2002 (D.C. Act 14-310, March 26, 2002, 49 DCR 3420).

For temporary (90 day) addition, see § 102 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2003 (D.C. Act 15-3, January 22, 2003, 50 DCR 1426).

For temporary (90 day) addition, see § 102 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment

Act of 2003 (D.C. Act 15-71, April 16, 2003, 50 DCR 3593).

For temporary (90 day) addition, see § 102 of Child and Youth, Safety and Health Omnibus Second Emergency Amendment Act of 2003 (D.C. Act 15-279, December 18, 2003, 51 DCR 60).

For temporary (90 day) addition, see § 102 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-407, March 18, 2004, 51 DCR 3659).

For temporary (90 day) addition, see § 102 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2004 (D.C. Act 15-630, November 30, 2004, 52 DCR 1143).

For temporary (90 day) addition, see § 102 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-30, February 17, 2005, 52 DCR 2993).

For temporary (90 day) amendment of section, see § 4(a)(2) of Anti-Drunk Driving Clarification Emergency Amendment Act of 2006 (D.C. Act 16-469, July 31, 2006, 53 DCR 6764).

For temporary (90 day) amendment of section, see § 4(b) of Anti-Drunk Driving Clarification Second Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-518, October 27, 2006, 53 DCR 9104).

For temporary (90 day) amendment of section, see § 4(b) of Anti-Drunk Driving Clarification Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-6, January 16, 2007, 54 DCR 1452).

Legislative history of Law 15-353. — For Law 15-353, see notes following § 1-620.31.

Legislative history of Law 16-195. — For Law 16-195, see notes following § 1-620.24.

§ 1-620.34. Testing methodology.

(a) Testing shall be performed by an outside contractor at a laboratory certified by the United States Department of Health and Human Services ("HHS") to perform job-related drug and alcohol forensic testing.

(b) For random testing of District employees, the contractor shall, at a location designated by the District to collect urine specimens on-site, split each sample and perform enzyme-multiplied-immunossay technique ("EMIT") testing on one sample and store the split of that sample. Any positive EMIT test

shall be then confirmed by the contractor, using the gas chromatography/mass spectrometry ("GCMS") methodology.

(c) Any District employee found to have a confirmed positive urinalysis shall be notified of the result. The employee may then authorize that the stored sample be sent to another HHS-certified laboratory of his or her choice, at his or her expense, for a confirmation, using the GCMS testing method.

(d) Reasonable suspicion and post-accident employee testing shall follow the same procedures set forth in subsections (a) through (c) of this section. In such cases, the employee shall be escorted by a supervisor to the contractor's test site for specimen collection or a breathalyzer.

(e) A breathalyzer shall be deemed positive by the District's testing contractor if the contractor determines that 1 milliliter of the employee's breath (consisting of substantially alveolar air) contains .38 micrograms or more of alcohol.

(f) Prior to testing, a physician must sit down with the employee and ask what medications he or she might have been taking to rule out any false positives in the drug screening results.

(Mar. 3, 1979, D.C. Law 2-139, § 2034, as added Apr. 13, 2005, D.C. Law 15-353, § 102, 52 DCR 2331.)

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 102 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2002 (D.C. Law 14-164, June 25, 2002, law notification 49 DCR 6500).

For temporary (225 day) addition of section, see § 102 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2003 (D.C. Law 15-2, May 3, 2003, law notification 50 DCR 3782).

For temporary (225 day) addition of section, see § 102 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2004 (D.C. Law 15-117, March 30, 2004, law notification 51 DCR 3804).

For temporary (225 day) addition of section, see § 102 of the Child and Youth, Safety and Health Omnibus Second Temporary Amendment Act of 2004 (D.C. Law 15-319, on April 8, 2005, law notification 52 DCR 4708).

Emergency legislation. — For temporary (90 day) addition, see § 102 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2002 (D.C. Act 14-310, March 26, 2002, 49 DCR 3420).

For temporary (90 day) addition, see § 102 of Child and Youth, Safety and Health Omnibus

Emergency Amendment Act of 2003 (D.C. Act 15-3, January 22, 2003, 50 DCR 1426).

For temporary (90 day) addition, see § 102 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-71, April 16, 2003, 50 DCR 3593).

For temporary (90 day) addition, see § 102 of Child and Youth, Safety and Health Omnibus Second Emergency Amendment Act of 2003 (D.C. Act 15-279, December 18, 2003, 51 DCR 60).

For temporary (90 day) addition, see § 102 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-407, March 18, 2004, 51 DCR 3659).

For temporary (90 day) addition, see § 102 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2004 (D.C. Act 15-630, November 30, 2004, 52 DCR 1143).

For temporary (90 day) addition, see § 102 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-30, February 17, 2005, 52 DCR 2993).

Legislative history of Law 15-353. — For Law 15-353, see notes following § 1-620.31.

§ 1-620.35. Procedure and employee impact.

(a) A drug and alcohol testing policy, including the notice required by § 1-620.32(d), shall be issued at least 30 days in advance of implementing the drug and alcohol program to inform District employees of the requirements of

the program and to allow each employee one opportunity to seek treatment, if he or she has a drug or alcohol problem. Thereafter, any confirmed positive drug test results, positive breathalyzer test, or a refusal to submit to a drug test or breathalyzer shall be grounds for termination of employment in accordance with this chapter.

(b) The testing program shall be implemented as a single program.

(c) The results of a random test conducted pursuant to this subchapter shall not be turned over to any law enforcement agency without the employee's written consent.

(d) An applicant may be offered employment contingent upon receipt of a satisfactory drug testing result, and may begin working in a position that is not a safety-sensitive position prior to receiving the results.

(Mar. 3, 1979, D.C. Law 2-139, § 2035, as added Apr. 13, 2005, D.C. Law 15-353, § 102, 52 DCR 2331.)

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 102 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2002 (D.C. Law 14-164, June 25, 2002, law notification 49 DCR 6500).

For temporary (225 day) addition of section, see § 102 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2003 (D.C. Law 15-2, May 3, 2003, law notification 50 DCR 3782).

For temporary (225 day) addition of section, see § 102 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2004 (D.C. Law 15-117, March 30, 2004, law notification 51 DCR 3804).

For temporary (225 day) addition of section, see § 102 of the Child and Youth, Safety and Health Omnibus Second Temporary Amendment Act of 2004 (D.C. Law 15-319, April 8, 2005, law notification 52 DCR 4708).

Emergency legislation. — For temporary (90 day) addition, see § 102 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2002 (D.C. Act 14-310, March 26, 2002, 49 DCR 3420).

For temporary (90 day) addition, see § 102 of Child and Youth, Safety and Health Omnibus

Emergency Amendment Act of 2003 (D.C. Act 15-3, January 22, 2003, 50 DCR 1426).

For temporary (90 day) addition, see § 102 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-71, April 16, 2003, 50 DCR 3593).

For temporary (90 day) addition, see § 102 of Child and Youth, Safety and Health Omnibus Second Emergency Amendment Act of 2003 (D.C. Act 15-279, December 18, 2003, 51 DCR 60).

For temporary (90 day) addition, see § 102 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-407, March 18, 2004, 51 DCR 3659).

For temporary (90 day) addition, see § 102 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2004 (D.C. Act 15-630, November 30, 2004, 52 DCR 1143).

For temporary (90 day) addition, see § 102 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-30, February 17, 2005, 52 DCR 2993).

Legislative history of Law 15-353. — For Law 15-353, see notes following § 1-620.31.

§ 1-620.36. Coverage of private contractual providers and private licensed providers.

Each private provider that contracts with the District of Columbia to provide employees to work in safety-sensitive positions and each private entity licensed by the District government that has employees who work in safety-sensitive positions shall establish mandatory drug and alcohol testing policies and procedures that are consistent with the requirements of this subchapter.

(Mar. 3, 1979, D.C. Law 2-139, § 2036, as added Apr. 13, 2005, D.C. Law 15-353, § 102, 52 DCR 2331.)

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 102 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2002 (D.C. Law 14-164, June 25, 2002, law notification 49 DCR 6500).

For temporary (225 day) addition of section, see § 102 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2003 (D.C. Law 15-2, May 3, 2003, law notification 50 DCR 3782).

For temporary (225 day) addition of section, see § 102 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2004 (D.C. Law 15-117, March 30, 2004, law notification 51 DCR 3804).

For temporary (225 day) addition of section, see § 102 of the Child and Youth, Safety and Health Omnibus Second Temporary Amendment Act of 2004 (D.C. Law 15-319, April 8, 2005, law notification 52 DCR 4708).

Emergency legislation. — For temporary (90 day) addition, see § 102 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2002 (D.C. Act 14-310, March 26, 2002, 49 DCR 3420).

For temporary (90 day) addition, see § 102 of Child and Youth, Safety and Health Omnibus

Emergency Amendment Act of 2003 (D.C. Act 15-3, January 22, 2003, 50 DCR 1426).

For temporary (90 day) addition, see § 102 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-71, April 16, 2003, 50 DCR 3593).

For temporary (90 day) addition, see § 102 of Child and Youth, Safety and Health Omnibus Second Emergency Amendment Act of 2003 (D.C. Act 15-279, December 18, 2003, 51 DCR 60).

For temporary (90 day) addition, see § 102 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-407, March 18, 2004, 51 DCR 3659).

For temporary (90 day) addition, see § 102 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2004 (D.C. Act 15-630, November 30, 2004, 52 DCR 1143).

For temporary (90 day) addition, see § 102 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-30, February 17, 2005, 52 DCR 2993).

Legislative history of Law 15-353. — For Law 15-353, see notes following § 1-620.31.

§ 1-620.37. Rules.

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, shall issue rules to implement the provisions of this subchapter.

(Mar. 3, 1979, D.C. Law 2-139, § 2037, as added Apr. 13, 2005, D.C. Law 15-353, § 102, 52 DCR 2331.)

Temporary legislation. — Section 102 of D.C. Law 14-164 enacted this section to read as follows:

“Sec. 2037. Rules.

“The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.), may issue rules to implement the provisions of this title.”

Section 1101(b) of D.C. Law 14-164 provided that the act shall expire after 225 days of its having taken effect.

Section 102 of D.C. Law 15-2 enacted this section to read as follows:

“Sec. 2037. Rules.

“The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.), may issue rules to implement the provisions of this title.”

Section 1101(b) of D.C. Law 15-2 provided that the act shall expire after 225 days of its having taken effect.

Section 102 of D.C. Law 15-117 this section to read as follows:

“Sec. 2037. Rules. The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.), may issue rules to implement the provisions of this title.”

Section 1101(b) of D.C. Law 15-117 provided that the act shall expire after 225 days of its having taken effect.

Section 102 of D.C. Law 15-319 enacted this section to read as follows:

“Sec. 2037. Rules. The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.), shall issue rules to implement the provisions of this title.”

Section 901(b) of D.C. Law 15-319 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition, see § 102 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2002 (D.C. Act 14-310, March 26, 2002, 49 DCR 3420).

For temporary (90 day) addition, see § 102 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2003 (D.C. Act 15-3, January 22, 2003, 50 DCR 1426).

For temporary (90 day) addition, see § 102 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-71, April 16, 2003, 50 DCR 3593).

For temporary (90 day) addition, see § 102 of Child and Youth, Safety and Health Omnibus Second Emergency Amendment Act of 2003 (D.C. Act 15-279, December 18, 2003, 51 DCR 60).

For temporary (90 day) addition, see § 102 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-407, March 18, 2004, 51 DCR 3659).

For temporary (90 day) addition, see § 102 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2004 (D.C. Act 15-630, November 30, 2004, 52 DCR 1143).

For temporary (90 day) addition, see § 102 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-30, February 17, 2005, 52 DCR 2993).

Legislative history of Law 14-164. — For Law 14-164, see notes following § 1-620.31.

Legislative history of Law 15-2. — For Law 15-2, see notes following § 1-620.31.

Legislative history of Law 15-117. — For Law 15-117, see notes following § 1-620.31.

Legislative history of Law 15-319. — For Law 15-319, see notes following § 1-620.31.

Legislative history of Law 15-353. — For Law 15-353, see notes following § 1-620.31.

Subchapter XX-D. Criminal History Inquiries.

§ 1-620.41. Definitions.

For the purposes of this subchapter, the term:

(1) “Applicant” means an individual who has filed an application for employment with a public employer or who has filed an application or made a verbal request to serve in a volunteer position with a public employer.

(2) “Covered position” means a position in which a criminal background check is required by law.

(3) “Public employer” means the District government.

(Mar. 3, 1979, D.C. Law 2-139, § 2041, as added Mar. 31, 2011, D.C. Law 18-340, § 2(b), 58 DCR 621.)

Legislative history of Law 18-340. — Law 18-340, the “Returning Citizen Public Employment Inclusion Amendment Act of 2010”, was introduced in Council and assigned Bill No. 18-826, which was referred to the Committee Government Operations and the Environment. The Bill was adopted on first and second read-

ings on December 7, 2010, and December 21, 2010, respectively. Signed by the Mayor on January 12, 2011, it was assigned Act No. 18-685 and transmitted to both Houses of Congress for its review. D.C. Law 18-340 became effective on March 31, 2011.

§ 1-620.42. Pre-employment inquiries.

(a) Before posting a vacancy announcement, a public employer shall determine if the position is a covered position.

(b) If a position is a covered position, a public employer may inquire about an applicant’s criminal history at any time; provided, that the vacancy announcement includes the following statement: “This position requires a criminal background check. Therefore, you may be required to provide information about your criminal history in order to be considered for this position.”

(c) If a position is not a covered position, a public employer shall not inquire about an applicant’s criminal history on the application form. A public employer may inquire about an applicant’s criminal history after the initial

screening of applications. If a public employer inquires about an applicant's criminal history, the applicant shall be permitted to provide an explanation of his criminal history to the public employer.

(Mar. 3, 1979, D.C. Law 2-139, § 2042, as added Mar. 31, 2011, D.C. Law 18-340, § 2(b), 58 DCR 621.)

Legislative history of Law 18-340. — For history of Law 18-340, see notes under § 1-620.41.

§ 1-620.43. Limitation on disqualification.

When considering whether to disqualify an applicant for a position that is not a covered position or take adverse action against an employee in a position that is not a covered position because of the applicant's or employee's criminal history, a public employer shall consider the following factors:

- (1) The specific duties and responsibilities of the position sought or held;
- (2) The bearing, if any, that an applicant's or employee's criminal background will have on the applicant's or employee's fitness or ability to perform one or more of the duties or responsibilities;
- (3) The time that has elapsed since the occurrence of the criminal offense;
- (4) The age of the person at the time of the occurrence of the criminal offense;
- (5) The frequency and seriousness of the criminal offense;
- (6) Any information produced regarding the applicants or employee's rehabilitation and good conduct since the occurrence of the criminal offense; and
- (7) The public policy that it is generally beneficial for ex-offenders to obtain employment.

(Mar. 3, 1979, D.C. Law 2-139, § 2043, as added Mar. 31, 2011, D.C. Law 18-340, § 2(b), 58 DCR 621.)

Legislative history of Law 18-340. — For history of Law 18-340, see notes under § 1-620.41.

§ 1-620.44. Implementation for public employers.

The Department of Human Resources shall provide guidance on the implementation of this subchapter to all personnel authorities within the District government on or before February 1, 2011.

(Mar. 3, 1979, D.C. Law 2-139, § 2044, as added Mar. 31, 2011, D.C. Law 18-340, § 2(b), 58 DCR 621.)

Cross references. — Federal Employees Health Benefits Plan, "supplemental benefit" defined, see § 31-3101.

Mayor and Council members, coverage, see § 1-602.02.

Merit system, effective date provisions, see § 1-636.02.

National Capital Revitalization Corporation, health, life and retirement benefit plans for officers and employees, see § 2-1219.05.

Organization for personnel management, rules and regulations, see § 1-604.04.
 Spouse equity, enrollment of former spouses in health benefit plan, see 1-529.04.

Legislative history of Law 18-340. — For history of Law 18-340, see notes under § 1-620.41.

Subchapter XXI. Health Benefits.

§ 1-621.01. Federal health benefits.

The health insurance benefit provisions of Chapter 89 of Title 5 of the United States Code are applicable to all employees of the District government first employed before October 1, 1987, except those specifically excluded by law or rule and regulation. Procedures established for administering the health benefits program with the District government shall be consistent with law and civil service rules.

(Mar. 3, 1979, D.C. Law 2-139, § 2101, 25 DCR 5740; Oct. 1, 1987, D.C. Law 7-27, § 2(c), 34 DCR 5079.)

Prior Codifications. — 1981 Ed., § 1-622.1.

1973 Ed., § 1-351.1.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 7-27. — For legislative history of D.C. Law 7-27, see Historical and Statutory Notes following § 1-621.02.

Editor's notes. — Feasibility Study for Federal Employees Health Benefits Program: See § 8 of the Health Care Benefits Expansion Act of 1992 (D.C. Law 9-114).

§ 1-621.02. District health benefits.

The District shall provide health benefits as set forth in § 1-621.05 to all employees of the District first employed after September 30, 1987, except those specifically excluded by law or by rule.

(Mar. 3, 1979, D.C. Law 2-139, § 2102, as added Oct. 1, 1987, D.C. Law 7-27, § 2(d), 34 DCR 5079.)

Cross references. — Health care benefits expansion, domestic partnerships, see § 32-701 et seq.

Section references. — This section is referred to in § 1-621.11.

Prior Codifications. — 1981 Ed., § 1-622.2.

Legislative history of Law 7-27. — Law 7-27 was introduced in Council and assigned

Bill No. 7-228, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 16, 1987 and June 30, 1987, respectively. Signed by the Mayor on July 17, 1987, it was assigned Act No. 7-49 and transmitted to both Houses of Congress for its review.

Editor's notes. — Health Care Benefits Expansion: See § 32-701 et seq.

§ 1-621.03. Definitions.

For the purposes of §§ 1-621.04 through 1-621.13, the term:

(1) "Annuitant" means:

(A) An employee first employed by the District after September 30, 1987, who has subsequently retired pursuant to any of the following:

(i) Teachers' Retirement System (§§ 38-2001.01 to 38-2023.16);

(ii) Police and Fire Retirement System §§ 5-707 to 5-730;

(iii) Judges' Retirement System (§§ 11-1561 to 11-1571); or

(iv) Teachers' Insurance and Annuity Association programs; or

(B) An employee first employed by the District after September 30, 1987, who has subsequently separated pursuant to the District Retirement Benefit Program (§§ 1-626.03 to 1-626.14) after any of the following:

(i) Reaching 57 years of age and having completed 25 years of creditable District service in a correctional officer position;

(ii) Reaching 62 years of age and having completed 10 years of District government service in a position other than correctional officer; or

(iii) Becoming entitled to disability benefits under the Social Security Act.

(2) "Carrier" means a voluntary association, corporation, partnership, or other nongovernmental organization that is lawfully engaged in providing, paying for, or reimbursing the cost of health services under group insurance policies or contracts, medical or hospital service agreements, membership or subscription contracts, or similar group arrangements, in consideration of premiums or other periodic charges payable to the organization.

(2A) "Creditable District service" means all service in the employment of the District government that is creditable for purposes of the employee's retirement.

(3) "Dependent child" includes:

(A) An adopted child; and

(B) A stepchild, foster child, or natural child of an employee or annuitant.

(4) "Employee" means an individual first employed by the District after September 30, 1987.

(5) "Health benefit plan" means a group insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or similar group arrangement provided by a carrier for the purpose of providing, paying for, or reimbursing expenses for health services under § 1-621.05.

(6) "Member of family" or "Family member" means:

(A) The spouse of an employee or annuitant;

(B) An unmarried dependent child under 22 years of age;

(C) An unmarried dependent child under 25 years of age who is a full-time student; and

(D) An unmarried child regardless of age who is incapable of self-support because of mental or physical disability that existed before age 22.

(Mar. 3, 1979, D.C. Law 2-139, § 2103, as added Oct. 1, 1987, D.C. Law 7-27, § 2(d), 34 DCR 5079; Mar. 20, 1998, D.C. Law 12-66, § 2(a), 45 DCR 343; Mar. 3, 2010, D.C. Law 18-111, § 1201(a), 57 DCR 181.)

Prior Codifications. — 1981 Ed., § 1-622.3.

Effect of amendments. — D.C. Law 18-111 rewrote pars. (1)(B)(i) to (iii); added par. (2A); and, in par. (6), substituted "Member of family" or "Family member" for "Member of family".

Prior to amendment, pars. (1)(B)(i) to (iii) read as follows: "(i) Reaching 57 years of age and having completed 25 years of creditable District service in a law enforcement position; (ii) Becoming entitled to retirement benefits under the Social Security Act; or (iii) Becoming enti-

tled to disability benefits under the Social Security Act.”

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(a) of the Comprehensive Merit Personnel Act Health and Life Insurance Clarification Temporary Amendment Act of 1996 (D.C. Law 11-183, April 9, 1997, law notification 44 DCR 2378).

Emergency legislation. — For temporary amendment of section, see § 2(a) of the Comprehensive Merit Personnel Act Health Benefits and Life Insurance Clarification Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-27, March 11, 1997, 44 DCR 1892), and § 2(a) of the Comprehensive Merit Personnel Act Health and Life Insurance Clarification Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-213, December 5, 1997, 44 DCR 7615).

For temporary (90 day) amendment of section, see § 1201(a) of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 1201(a) of Fiscal Year Budget Sup-

port Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 7-27. — For legislative history of D.C. Law 7-27, see Historical and Statutory Notes following § 1-621.02.

Legislative history of Law 12-66. — Law 12-66, the “Comprehensive Merit Personnel Act Health and Life Insurance Clarification Amendment Act of 1997,” was introduced in Council and assigned Bill No. 12-229, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 7, 1997, and November 4, 1997, respectively. Signed by the Mayor on November 21, 1997, it was assigned Act No. 12-205 and transmitted to both Houses of Congress for its review. D.C. Law 12-66 became effective on March 20, 1998.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 1-301.181.

Short title. — Short title: Section 1200 of D.C. Law 18-111 provided that subtitle U of title I of the act may be cited as the “District Retirement Program Post-Employment Health and Life Insurance Benefits Amendment Act of 2009”.

§ 1-621.04. Contracting authority.

The Mayor may contract with qualified carriers to provide health benefits under the laws of the District for periods of time to be determined by the Mayor. Any contract under this section shall be in accordance with the provisions of Chapter 3 of title 2.

(Mar. 3, 1979, D.C. Law 2-139, § 2104, as added Oct. 1, 1987, D.C. Law 7-27, § 2(d), 34 DCR 5079.)

Section references. — This section is referred to in §§ 1-621.03 and 1-621.12.

Prior Codifications. — 1981 Ed., § 1-622.4.

Legislative history of Law 7-27. — For legislative history of D.C. Law 7-27, see Historical and Statutory Notes following § 1-621.02.

§ 1-621.05. Health benefit plans.

The District may contract for or approve the following health benefit plans:

(1) An Indemnity Benefit Plan: One District-wide plan offering at least 3 levels of benefits (one of which shall be deemed by the Mayor to be a standard option) under which a carrier agrees to pay certain sums of money, not in excess of the actual expenses incurred, for health benefits.

(2) Health Maintenance Organization Plans including:

(A) One or more group prepayment plans that offer health benefits, in whole or in substantial part on a prepaid basis, with professional services provided by physicians representing at least 3 major medical specialties practicing as a group in a common center or centers who receive all or a substantial part of their professional income from the prepaid funds; and

(B) An individual practice prepayment plan that offers health benefits

in whole or substantial part on a prepaid basis, with professional services provided by individual physicians who agree, under rules promulgated by the Mayor, to accept the payments provided by the plan as full payment for covered services that include in-hospital services, general care provided in their offices and in the patients' homes, out-of-hospital diagnostic procedures, and preventive care.

(3) Preferred Provider Organization Plan: An individual practice plan that offers health benefits in whole or substantial part with professional services provided by individual physicians, hospitals, and other health care providers who agree under rules promulgated by the Mayor to accept contractually reduced payments for the covered services they provide.

(4) Combined Benefit Plan: A plan that includes elements of more than 1 of the plans described in paragraphs (1), (2), and (3) of this section.

(5) Other Health Benefit Plans: Nothing in this section shall preclude the Mayor from contracting for or approving a type of health benefit plan not specifically listed in this section.

(Mar. 3, 1979, D.C. Law 2-139, § 2105, as added Oct. 1, 1987, D.C. Law 7-27, § 2(d), 34 DCR 5079; Mar. 2, 1991, D.C. Law 8-190, § 2(b), 37 DCR 6721.)

Cross references. — Employees Health Benefits Program, self-financed coverage, see § 32-706.

Section references. — This section is referred to in §§ 1-621.02, 1-621.03, 1-621.06, 1-621.07, 1-621.12, 1-621.13, and 1-702.

Prior Codifications. — 1981 Ed., § 1-622.5.

Legislative history of Law 7-27. — For legislative history of D.C. Law 7-27, see Historical and Statutory Notes following § 1-621.02.

Legislative history of Law 8-190. — For legislative history of D.C. Law 8-190, see Historical and Statutory Notes following § 1-621.14.

Editor's notes. — Mayor authorized to enter agreements to modify health benefits contracts: See Historical and Statutory Notes following § 1-611.03.

§ 1-621.06. Types of benefits.

(a) The benefits provided under the health benefit plans shall include benefits for costs associated with care in a general hospital and for health services of a catastrophic nature and may include at a minimum the following benefits:

- (1) Hospital benefits;
- (2) Managed care;
- (3) Office visits;
- (4) Substance abuse;
- (5) Well baby care;
- (6) Prescription drugs;
- (7) Obstetrical benefits;
- (8) Mental health benefits; and
- (9) Hospice care.

(b) Each contract issued under § 1-621.05 shall comply with the provisions of Chapter 31 of Title 31.

(Mar. 3, 1979, D.C. Law 2-139, § 2106, as added Oct. 1, 1987, D.C. Law 7-27, § 2(d), 34 DCR 5079.)

Cross references. — Employees Health Benefits Program, self-financed coverage, see § 32-706.

Section references. — This section is referred to in §§ 1-621.03 and 1-529.04.

Prior Codifications. — 1981 Ed., § 1-622.6.

Legislative history of Law 7-27. — For legislative history of D.C. Law 7-27, see Historical and Statutory Notes following § 1-621.02.

§ 1-621.07. Election of coverage.

(a) Unless an employee or annuitant affirmatively waives health insurance coverage, each employee or annuitant shall enroll in 1 of the approved health benefit plans under § 1-621.05 either as an individual or for self and family or provide evidence satisfactory to the Mayor that the employee or annuitant is covered under another health benefit plan.

(b) If an employee or annuitant has a spouse or domestic partner who is an employee or annuitant, either spouse or domestic partner but not both may enroll for self and family, or each spouse or domestic partner may enroll as an individual. An individual shall not be enrolled as an employee or annuitant and also as a member of a family.

(c) An employee or an annuitant enrolled in a health benefit plan may change coverage by an application filed within 60 days of a change in family status or as otherwise permitted by rule promulgated by the Mayor.

(d) An employee or annuitant may transfer enrollment from one health benefit plan to another health benefit plan under § 1-621.05 as permitted by rules promulgated by the Mayor.

(Mar. 3, 1979, D.C. Law 2-139, § 2107, as added Oct. 1, 1987, D.C. Law 7-27, § 2(d), 34 DCR 5079; Sept. 12, 2008, D.C. Law 17-231, § 3(e), 55 DCR 6758.)

Section references. — This section is referred to in §§ 1-621.03, 1-529.04, and 32-706.

Prior Codifications. — 1981 Ed., § 1-622.7.

Effect of amendments. — D.C. Law 17-231, in subsec. (b), substituted “spouse or domestic partner” for “spouse”.

Legislative history of Law 7-27. — For legislative history of D.C. Law 7-27, see Historical and Statutory Notes following § 1-621.02.

Legislative history of Law 17-231. — For Law 17-231, see notes following § 1-301.45.

§ 1-621.08. Employee deductions and withholdings.

(a) During each pay period in which an employee or an annuitant is enrolled under 1 of the health benefit plans there shall be withheld from the compensation of each employee and from the annuity of each annuitant or there shall be paid by each annuitant who received his or her benefits as a lump sum payment an amount equal to the cost of the selected health benefit plan less the amount of the District contribution for the employee or the annuitant. The amount withheld or paid by the employee or the annuitant, together with the District’s contribution, shall be transferred to the carrier of the health benefit plan selected by the employee or the annuitant.

(b) During each pay period in which an individual receiving disability compensation benefits pursuant to subchapter XXIII of this chapter is enrolled under 1 of the health benefit plans, there shall be withheld from those benefits an amount equal to the cost of the selected health benefit plan less the amount of the District contribution for the enrolled individual. The amount withheld

from the employee or the annuitant, together with the District's contribution, shall be transferred to the carrier of the health benefit plan selected by the individual receiving disability benefits.

(Mar. 3, 1979, D.C. Law 2-139, § 2108, as added Oct. 1, 1987, D.C. Law 7-27, § 2(d), 34 DCR 5079.)

Section references. — This section is referred to in §§ 1-621.03 and 1-529.04.

Prior Codifications. — 1981 Ed., § 1-622.8.

Legislative history of Law 7-27. — For legislative history of D.C. Law 7-27, see Historical and Statutory Notes following § 1-621.02.

§ 1-621.09. District contribution.

(a) The District's contribution to the cost of any health benefit plan shall be an amount equal to 72% of the subscription charge of the standard option indemnity plan, except that in no event shall the District's contribution exceed 72% of the total subscription charge of any plan or option in which the employee is enrolled. The District's contribution shall be paid on a regular pay period basis.

(b) The Mayor shall determine the amount of the District contribution for individual and for self and family enrollments before the beginning date of each contract period.

(c) There is established the Annuitants' Health and Life Insurance Employer Contribution Trust Fund ("Fund") from which the District's contribution for health and life insurance for annuitants shall be paid. The monies in the Fund shall not be a part of, or lapse into, the General Fund of the District or any other fund of the District.

(d) Every fiscal year, the Chief Financial Officer shall deposit into the Fund the amount that has been appropriated for the purpose of funding the District contribution for the health and life insurance premiums of annuitants. The Chief Financial Officer may also deposit into the Fund any balances in rate stabilization fund reserves that are refunded to the District by a health insurance carrier.

(e) Notwithstanding the other provisions of this chapter, the Mayor may issue rules to establish vesting requirements for the provision of other post-employment benefits to annuitants. Any proposed rules promulgated by the Mayor shall be submitted to the Council for a 60-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules within the 60-day period, by resolution, the proposed rules shall be deemed disapproved.

(f) In the case of an annuitant who has separated pursuant to the District Retirement Benefit Program, no contribution shall be made by the District until the annuitant attains 62 years of age. The annuitant shall pay 100% of the cost of any health benefit plan selected by the annuitant until the annuitant attains age 62. Upon attaining 62 years of age, the District shall pay a portion of the cost of any health benefit plan selected by the annuitant in accordance with subsections (h)(1) or (2) of this section.

(g) In the case of an annuitant described in subsection (g) of this section who retired pursuant to the Teachers' Retirement System, or the Judges' Retirement

ment System or the Teachers' Insurance and Annuity Association programs, the District shall pay the portion of the cost of any health benefit plan selected by the annuitant in accordance with subsection (h) of this section.

(h) The District contribution to post-employment health benefits for an annuitant described in subsection (g) of this section (and following the annuitant's death, the annuitant's eligible family members) shall be determined as follows:

(1) For annuitants who retire with at least 10 years of creditable District service, but less than 30 years of creditable District service, the District contribution to the cost of a health benefit plan selected by the annuitant shall be an amount equal to 25% of the cost of the selected health benefit plan (as secondary to Medicare) and 20% for the covered family member of the annuitant, plus an additional 2.5% for each year of creditable District service over 10 years; provided, that the District contribution shall not exceed 72% of the cost of the selected health benefits plan and 60% for the covered family member of the annuitant. The annuitant and family member shall contribute the applicable balance of the cost of the selected health benefit plan.

(2) For annuitants with 30 or more years of creditable District service, the District contribution shall be an amount equal to 72% of the cost of the selected health benefit plan and the annuitant shall contribute 28% of the cost of the selected health benefit plan. For a covered family member of an annuitant, the District contribution shall be an amount equal to 60% of the cost of the selected health benefit plan and the covered family member shall contribute 40% of the cost of the selected health benefit plan.

(3) For annuitants who are injured or killed in the line of duty, the District's contribution shall be an amount equal to 72% of the cost of the selected health benefit plan and the annuitant shall contribute 28% of the cost of the selected health benefit plan. For a covered family member of an annuitant, the District contribution shall be an amount equal to 72% of the cost of the selected health benefit plan and the family member shall contribute 28% of the cost of the selected health benefit plan. This paragraph shall apply as of October 1, 2009.

(i) In the case of an annuitant who retired pursuant to the Police and Fire Retirement System, the District shall pay the portion of the cost of any health benefit plan selected by the annuitant in accordance with subsection (j) of this section.

(j) The District contribution to post-employment health benefits for an annuitant (and following the annuitant's death, the annuitant's eligible family members) shall be determined as follows:

(1) For annuitants hired before November 10, 1996, who retire with at least 5 years of creditable District service, the District contribution shall be an amount equal to 72% of the cost of the selected health benefit plan and the annuitant shall contribute 28% of the cost of the selected health benefit plan. For a covered family member of an annuitant, the District contribution shall be an amount equal to 60% of the cost of the selected health benefit plan and the covered family member shall contribute 40% of the cost of the selected health benefit plan.

(2) For annuitants hired on or after November 10, 1996, with at least 10 years of creditable District service, but less than 25 years of creditable District service, the District contribution to the cost of a health benefit plan selected by the annuitant shall be an amount equal to 30% of the cost of the selected health benefit plan (as secondary to Medicare) for the annuitant, plus an additional 3% for each year of creditable District service over 10 years, and 25% for the covered family member of the annuitant, plus an additional 3% for each year of creditable District service over 10 years; provided, that the District contribution shall not exceed 72% of the cost of the selected health benefits plan for the annuitant and 60% of the cost of the selected health benefits plan for the covered family member of the annuitant. The annuitant and family member shall contribute the applicable balance of the cost of the selected health benefit plan.

(k) In the case of an individual who would otherwise be subject to the Police and Fire Retirement System upon retirement but who is killed in the line of duty and in the case of an individual who retires under the Police and Fire Retirement System due to an injury that occurred in the line of duty, the District shall pay the portion of the cost of any health benefit plan selected by the individual or the individual family member in accordance with subsection (1) of this section.

(l) For an individual covered by subsection (k) of this section, the District's contribution to the cost of the selected health benefits plan of the individual shall be an amount equal to 72% of the cost of the selected health benefit plan and the individual shall contribute 28% of the cost of the selected health benefit plan. For a covered family member of the individual, the District contribution to the cost of the selected health benefit plan of the family member shall be an amount equal to 72% of the cost of the selected health benefit plan and the family member shall contribute 28% of the cost of the selected health benefit plan.

(m) An individual described in subsection (k) of this section shall be considered an annuitant for the purposes of this section.

(Mar. 3, 1979, D.C. Law 2-139, § 2109, as added Oct. 1, 1987, D.C. Law 7-27, § 2(d), 34 DCR 5079; Mar. 2, 1991, D.C. Law 8-190, § 2(c), 37 DCR 6721; Mar. 7, 2000, D.C. Law 13-54, § 2(a), 46 DCR 9915; Aug. 16, 2008, D.C. Law 17-219, § 7008, 55 DCR 7598; Mar. 3, 2010, D.C. Law 18-111, § 1201(b), 57 DCR 181; D.C. Law 18-223, § 1092(a), Sept. 24, 2010, 57 DCR 6242; Apr. 8, 2011, D.C. Law 18-370, § 102, 58 DCR 1008; Sept. 14, 2011, D.C. Law 19-21, § 1052, 58 DCR 6226.)

Section references. — This section is referred to in §§ 1-621.03, 1-621.11, and 1-529.04.

Prior Codifications. — 1981 Ed., § 1-622.9.

Effect of amendments. — D.C. Law 13-54 added subsecs. (c) and (d).

D.C. Law 17-219 added subsec. (e).

D.C. Law 18-111 rewrote subsec. (d); and added subsecs. (f) to (h).

D.C. Law 18-223, in subsec. (g), substituted "or" for "the Police and Fire Retirement System,"; in subsec. (h), substituted "for an annuitant described in subsection (g) of this section" for "an annuitant" in the lead-in text and rewrote par. (3); and added subsecs. (i) to (m).

D.C. Law 18-370, in subsecs. (a), (h)(2), (h)(3), (j)(1), and (l), substituted "an amount equal to 72%" for "an amount equal to 75%"; in subsecs. (a) and (h)(1), substituted "exceed 72%" for

"exceed 75%"; in subssecs. (h)(2), (h)(3), (j)(1), and (l), substituted "contribute 28%" for "contribute 25%"; and, in subsec. (j)(2), substituted "shall not exceed 75%" for "shall not exceed 72%".

D.C. Law 19-21 rewrote subssecs. (h)(3) and (l), which formerly read:

"(3) For annuitants who are injured or killed in the line of duty, the District's contribution shall be an amount equal to 72% of the cost of the selected health benefit plan and the annuitant shall contribute 28% of the cost of the selected health benefit plan. For a covered family member of an annuitant, the District contribution shall be an amount equal to 72% of the cost of the selected health benefit plan and the family member shall contribute 28% of the cost of the selected health benefit plan. This paragraph shall apply as of October 1, 2009."

"(l) For an individual covered by subsection (k) of this section, the District's contribution to the cost of the selected health benefits plan of the individual shall be an amount equal to 72% of the cost of the selected health benefit plan and the individual shall contribute 28% of the cost of the selected health benefit plan. For a covered family member of the individual, the District contribution to the cost of the selected health benefits plan of the family member shall be an amount equal to 72% of the cost of the selected health benefit plan and the family member shall contribute 28% of the cost of the selected health benefit plan."

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(a) of the Annuitants' Health and Life Insurance Employer Contribution Temporary Amendment Act of 1999 (D.C. Law 12-278, April 27, 1999, law notification 46 DCR 4284).

Section 2 of D.C. Law 18-100, in section 1201(b)(2) of D.C. Act 18-207, substituted "(3) For annuitants who are injured or killed in the line of duty, the District's contribution shall be an amount equal to 75% of the cost of the selected health benefit plan and the annuitant shall contribute 25% of the cost of the selected health benefit plan. For a covered family member of an annuitant, the District contribution shall be an amount equal to 75% of the cost of the selected health benefit plan and the family member shall contribute 25% of the cost of the selected health benefit plan. This paragraph shall apply as of October 1, 2009." for "(3) For annuitants who are injured or killed in the line of duty, the District's contribution shall be an amount equal to 75% of the cost of the selected health benefit plan and the annuitant shall contribute 25% of the cost of the selected health benefit plan. For a covered family member of an annuitant, the District contribution shall be an amount equal to 60% of the cost of the selected health benefit plan and the family member

shall contribute 40% of the cost of the selected health benefit plan."

Section 3 of D.C. Law 18-100, in section 1201(b)(2) of D.C. Law 18-111, substituted "(3) For annuitants who are injured or killed in the line of duty, the District's contribution shall be an amount equal to 75% of the cost of the selected health benefit plan and the annuitant shall contribute 25% of the cost of the selected health benefit plan. For a covered family member of an annuitant, the District contribution shall be an amount equal to 75% of the cost of the selected health benefit plan and the family member shall contribute 25% of the cost of the selected health benefit plan. This paragraph shall apply as of October 1, 2009." for "(3) For annuitants who are injured or killed in the line of duty, the District's contribution shall be an amount equal to 75% of the cost of the selected health benefit plan and the annuitant shall contribute 25% of the cost of the selected health benefit plan. For a covered family member of an annuitant, the District contribution shall be an amount equal to 60% of the cost of the selected health benefit plan and the family member shall contribute 40% of the cost of the selected health benefit plan."

Section 5(b) of D.C. Law 18-100 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 2(a) of the Annuitants' Health and Life Insurance Employer Contribution Emergency Amendment Act of 1998 (D.C. Act 12-617, January 22, 1999, 46 DCR 1335).

For temporary (90-day) amendment of section, see § 2(a) of the Annuitants' Health and Life Insurance Employer Contribution Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-199, December 1, 1999, 46 DCR 10446).

For temporary (90-day) amendment of section, see § 2(a) of the Annuitants' Health and Life Insurance Employer Contribution Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-276, March 7, 2000, 47 DCR 2015).

For temporary (90 day) amendment of section, see § 7008 of Fiscal Year 2009 Budget Support Emergency Act of 2008 (D.C. Act 17-468, July 28, 2008, 55 DCR 8746).

For temporary (90 day) amendment of section, see § 1201(b) of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see §§ 2 and 3 of Police and Firefighter Post-Retirement Health Benefits Emergency Amendment Act of 2009 (D.C. Act 18-230, November 5, 2009, 56 DCR 8794).

For temporary (90 day) amendment of section, see § 1201(b) of Fiscal Year Budget Sup-

port Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

For temporary (90 day) amendment of section, see § 102 of Fiscal Year 2011 Supplemental Budget Support Emergency Act of 2010 (D.C. Act 18-694, January 19, 2011, 58 DCR 662).

For temporary (90 day) amendment of section, see § 1012 of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) amendment of section, see § 1012 of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 7-27. — For legislative history of D.C. Law 7-27, see Historical and Statutory Notes following § 1-621.02.

Legislative history of Law 8-190. — For legislative history of D.C. Law 8-190, see Historical and Statutory Notes following § 1-621.14.

Legislative history of Law 13-54. — Law 13-54, the “Annuityants’ Health and Life Insurance Employer Contribution Amendment Act of 1999,” was introduced in Council and assigned Bill No. 13-286, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on July 6, 1999, and September 21, 1999, respectively. Signed by the Mayor on October 1, 1999, it was assigned Act No. 13-149 and transmitted to both Houses of Congress for its review. D.C. Law 13-54 became effective on March 7, 2000.

Legislative history of Law 17-219. — For Law 17-219, see notes following § 1-308.29.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 1-301.181.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 1-301.78.

Legislative history of Law 18-370. — For history of Law 18-370, see notes under § 1-301.01.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 1-301.01.

Short title. — Short title: Section 7007 of D.C. Law 17-219 provided that subtitle D of title VII of the act may be cited as the “Other Post-Employment Benefits Eligibility Act of 2008”.

Short title: Section 1091 of D.C. Law 18-223 provided that subtitle J of title I of the act may be cited as the “Police and Firefighter Post-Retirement Health Benefits Amendment Act of 2010”.

Short title: Section 101 of D.C. Law 18-370 provided that subtitle A of title I of the act may be cited as “Health Benefit Plan District Contribution Amendment Act of 2010”.

Short title: Section 1051 of D.C. Law 19-21 provided that subtitle E of title I of the act may be cited as “Police and Firefighter Post-Retirement Health Benefits Clarification Amendment Act of 2011”.

Editor’s notes. — Section 1093 of D.C. Law 18-223 provided: “Sec. 1093. Applicability. (a) Section 1092(a) and (c) shall apply as of October 1, 2011. (b) This subtitle shall apply subject to its inclusion in an approved budget and financial plan.”

Section 103 of D.C. Law 18-370 provided: “Sec. 103. Applicability. This subtitle shall apply as of January 1, 2011.”

Mayor authorized to enter agreements to modify health benefits contracts: See Historical and Statutory Notes following § 1-611.03.

§ 1-621.10. Information to employees.

(a) The Mayor shall make available to each employee information as may be necessary to enable the employee to exercise an informed choice among the types of health benefit plans offered.

(b) The Mayor shall make available to each employee and annuitant enrolled in a health benefit plan a written statement or summary of:

(1) The services or benefits, including maximums, limitations, and exclusions, to which the employee, annuitant, or member of the family of the employee or annuitant are entitled;

(2) The procedures for obtaining benefits; and

(3) The principal provisions of the health benefit plan affecting the employee, annuitant, or member of the family of the employee or annuitant.

(Mar. 3, 1979, D.C. Law 2-139, § 2110, as added Oct. 1, 1987, D.C. Law 7-27, § 2(d), 34 DCR 5079.)

Section references. — This section is referred to in §§ 1-621.03 and 1-529.04.

Prior Codifications. — 1981 Ed., § 1-622.10.

Legislative history of Law 7-27. — For legislative history of D.C. Law 7-27, see Historical and Statutory Notes following § 1-621.02.

§ 1-621.11. Coverage of restored employees.

An employee enrolled in a health benefit plan under § 1-621.02 who is removed or suspended without pay and later reinstated or restored to duty on the ground that the removal or suspension was unwarranted or unjustified may, at the employee's option, enroll as a new employee or have the employee's coverage restored, with appropriate adjustments made in contributions and claims, to the same extent and effect as though the removal or suspension had not taken place.

(Mar. 3, 1979, D.C. Law 2-139, § 2111, as added Oct. 1, 1987, D.C. Law 7-27, § 2(d), 34 DCR 5079.)

Section references. — This section is referred to in §§ 1-621.03 and 1-529.04.

Prior Codifications. — 1981 Ed., § 1-622.11.

Legislative history of Law 7-27. — For legislative history of D.C. Law 7-27, see Historical and Statutory Notes following § 1-621.02.

§ 1-621.12. Evaluations; reports; audits.

(a) The Mayor shall make periodic evaluations of the operation and administration of the health benefit plans provided under § 1-621.05.

(b) Each contract entered into under § 1-621.04 shall require the carrier to:

(1) Furnish reasonable reports as the Mayor determines necessary to enable the District to carry out its functions under this subchapter; and

(2) Permit the Mayor to examine records of the carriers as may be necessary to carry out the purposes of this subchapter.

(Mar. 3, 1979, D.C. Law 2-139, § 2112, as added Oct. 1, 1987, D.C. Law 7-27, § 2(d), 34 DCR 5079.)

Section references. — This section is referred to in §§ 1-621.03 and 1-529.04.

Prior Codifications. — 1981 Ed., § 1-622.12.

Legislative history of Law 7-27. — For legislative history of D.C. Law 7-27, see Historical and Statutory Notes following § 1-621.02.

§ 1-621.13. Rules; eligibility.

(a) In order to ensure proper implementation of the health benefit plans under § 1-621.05 by October 1, 1987, the Mayor may issue temporary rules regarding the health benefit plans that shall not be subject to Council review. These temporary rules shall remain in effect only until the proposed rules have been approved or been deemed approved by the Council in accordance with subsection (b) of this section.

(b) The Mayor shall, pursuant to subchapter I of Chapter 5 of Title 2, issue proposed rules to implement the provisions of this subchapter. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council

does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(c) The proposed rules submitted pursuant to subsection (a) of this section shall prescribe the time, manner, and conditions under which employees and annuitants are eligible for coverage. The proposed rules may exclude employees on the basis of the nature and type of employment or conditions of employment such as short-term appointment, seasonal employment, intermittent or part-time employment, or employment of a similar nature, but shall not exclude an employee or group of employees solely on the basis of the hazardous nature of employment.

(d) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, [§ 2-501 et seq.], may issue rules to implement the provisions of this chapter, including rules related to post-employment health benefits coverage, including structuring coverage so that it is secondary to other coverage (including Medicare).

(Mar. 3, 1979, D.C. Law 2-139, § 2113, as added Oct. 1, 1987, D.C. Law 7-27, § 2(d), 34 DCR 5079; Mar. 3, 2010, D.C. Law 18-111, § 1201(c), 57 DCR 181; Sept. 24, 2010, D.C. Law 18-223, § 1092(b), 57 DCR 6242.)

Section references. — This section is referred to in §§ 1-621.03 and 1-529.04.

Prior Codifications. — 1981 Ed., § 1-622.13.

Effect of amendments. — D.C. Law 18-111 added subsec. (d).

D.C. Law 18-223 rewrote subsec. (d), which had read as follows: “(d) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, may issue proposed rules relating to post-employment health benefits coverage including structuring coverage so that it is secondary to other coverage (including Medicare). The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.”

Emergency legislation. — For temporary (90 day) amendment of section, see § 1201(c) of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 1201(c) of Fiscal Year Budget Sup-

port Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

For temporary (90 day) amendment of section, see § 1092(b) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

For temporary (90 day) addition of section, see § 1093(b) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 7-27. — For legislative history of D.C. Law 7-27, see Historical and Statutory Notes following § 1-621.02.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 1-301.181.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 1-301.78.

Short title. — Short title: Section 1091 of D.C. Law 18-223 provided that subtitle J of title I of the act may be cited as the “Police and Firefighter Post-Retirement Health Benefits Amendment Act of 2010”.

Editor’s notes. — Section 1093(b) of D.C. Law 18-223 provided: “(b) This subtitle shall apply subject to its inclusion in an approved budget and financial plan.”

§ 1-621.14. Continued health benefits coverage.

A District government employee who is separated from service, or an employee’s dependent who ceases to be a dependent, may be eligible for extended health benefit coverage in accordance with rules issued by the Mayor. The rules shall be as consistent as possible with federal regulations governing

extended health benefits for District government employees enrolled in the Federal Employee Health Benefits Plan.

(Mar. 3, 1979, D.C. Law 2-139, § 2114, as added Mar. 2, 1991, D.C. Law 8-190, § 2(d), 37 DCR 6721.)

Cross references. — Termination of domestic partnerships, continued health benefits coverage, see § 32-702.

Prior Codifications. — 1981 Ed., § 1-622.14.

Legislative history of Law 8-190. — Law 8-190 was introduced in Council and assigned Bill No. 8-586, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on September 25, 1990, and October 9, 1990, respectively. Signed by the Mayor on October 17,

1990, it was assigned Act No. 8-253 and transmitted to both Houses of Congress for its review.

References in text. — The “Federal Employee Health Benefits Plan”, referred to in the second sentence, is treated in 5 U.S.C., Chapter 89.

Editor’s notes. — Mayor authorized to enter agreements to modify health benefits contracts: See Historical and Statutory Notes following § 1-611.03.

§ 1-621.15. Reimbursement of excess premium costs. [Expired].

Expired.

(Mar. 3, 1979, D.C. Law 2-139, § 2115, as added Mar. 2, 1991, D.C. Law 8-196, § 2, 37 DCR 6735.)

Prior Codifications. — 1981 Ed., § 1-622.15.

Expiration of Law 8-196. — Section 3(b) of D.C. Law 8-196, as amended by § 2 of D.C. Law 10-133 and § 2 of D.C. Law 10-213, provided

that the act shall expire 6 years after its having taken effect.

Editor’s notes. — Pursuant to Law 10-213 this section expired on March 3, 1997.

§ 1-621.16. Information about post-employment benefit plans.

Upon a request of the District of Columbia Retirement Board, the Mayor, the Chief Financial Officer, the Chairman of the District of Columbia Public Charter School Board, the President of the Board of Education, or their successors, shall furnish to the Retirement Board information with respect to health benefit plans that the Retirement Board considers necessary to enable it to carry out its responsibilities under this chapter.

(Mar. 3, 1979, D.C. Law 2-139, § 2116, as added Apr. 13, 2005, D.C. Law 15-354, § 5(e), 52 DCR 2638.)

Legislative history of Law 15-354. — For Law 15-354, see notes following § 1-523.01.

§ 1-621.17. Post-employment benefits.

(a) An annuitant may be eligible for the post-employment health benefits as set forth in § 1-621.05.

(b) To be eligible for post-employment health benefits, the annuitant must:

(1) Retire with at least:

(A) 10 years of creditable District service if the annuitant retired under the District Retirement Benefit Program, the Teachers' Retirement System, the Judges' Retirement System, or the Teachers' Insurance and Annuity Association programs; or

(B) 10 years of creditable District service if the annuitant retired under the Police and Fire Retirement System and the annuitant was hired on or after November 10, 1996; or

(C) 5 years of creditable District service if the annuitant retired under the Police and Fire Retirement System and the annuitant was hired before November 10, 1996;

(2) Be enrolled in a health benefit plan under § 1-621.05 at the time of retirement;

(3) Have been continuously enrolled in a health benefit plan under § 1-621.05 for a period of at least 5 years preceding the annuitant's retirement date; and

(4) Remain continuously covered under a health benefit plan under § 1-621.05.

(b-1) In addition to annuitants eligible under this section for the post-employment health benefits as set forth in § 1-621.05, individuals described in § 1-621.09(k) shall also be eligible for such benefits and those individuals shall be considered annuitants for the purposes of this section.

(c) If an annuitant's coverage in a health benefit plan under § 1-621.05 ends, for any reason, the annuitant shall cease to be eligible for post-employment health benefits and shall not re-enroll, as an annuitant, in a health benefit plan under § 1-621.05.

(d) Upon the death of an annuitant who is enrolled in a health benefit plan under § 1-621.05 with family coverage, the annuitant's surviving spouse and dependent children who are covered under the health benefit plan at the time of death may continue enrollment in a health benefit plan under § 1-621.05.

(Mar. 3, 1979, D.C. Law 2-139, § 2117, as added Mar. 3, 2010, D.C. Law 18-111, § 1201(d), 57 DCR 181; D.C. Law 18-223, § 1092(c), Sept. 24, 2010, 57 DCR 6242.)

Cross references. — National Capital Revitalization Corporation, health, life and retirement benefit plans for officers and employees, see § 2-1219.05.

Effect of amendments. — D.C. Law 18-223 rewrote subsec. (b)(1); and added subsec. (b-1).

Emergency legislation. — For temporary (90 day) addition, see § 1201(d) of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) addition, see § 1201(d) of Fiscal Year Budget Support Con-

gressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 18-111. — For Law 18-111, see notes following § 1-301.181.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 1-301.78.

Editor's notes. — Section 1093 of D.C. Law 18-223 provided: "Sec. 1093. Applicability. (a) Section 1092(a) and (c) shall apply as of October 1, 2011. (b) This subtitle shall apply subject to its inclusion in an approved budget and financial plan."

*Subchapter XXII. Life Insurance; Benefit Program Study.***§ 1-622.01. Federal life insurance benefits.**

The life insurance benefits provisions of Chapter 87 of Title 5 of the United States Code shall apply to all employees of the District government first employed before October 1, 1987, except those specifically excluded by law or rule and regulation. Procedures established for administering the life insurance benefits program within the District government shall be consistent with law and civil services rules.

(Mar. 3, 1979, D.C. Law 2-139, § 2201, 25 DCR 5740; Oct. 1, 1987, D.C. Law 7-27, § 2(e), DCR 5079.)

Section references. — This subchapter is referred to in §§ 1-610.63, 1-702, and 2-1219.05.

Prior Codifications. — 1981 Ed., § 1-623.1.

1973 Ed., § 1-352.1.

Legislative history of Law 2-139. — For

legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 7-27. — For legislative history of D.C. Law 7-27, see Historical and Statutory Notes following § 1-621.02.

§ 1-622.02. Benefit program study.

Within 18 months after March 3, 1979, the Mayor shall transmit a study to the Council concerning development of a program of disability income protection to be made available to employees through collective bargaining and a program of low cost legal services for employees.

(Mar. 3, 1979, D.C. Law 2-139, § 2202, 25 DCR 5740.)

Prior Codifications. — 1981 Ed., § 1-623.2.

1973 Ed., § 1-352.2.

Legislative history of Law 2-139. — For

legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

§ 1-622.03. District life insurance benefits.

The District shall provide the group life insurance benefits set forth in § 1-622.07 to all employees of the District first employed after September 30, 1987, except those specifically excluded by law or by rule.

(Mar. 3, 1979, D.C. Law 2-139, § 2203, as added Oct. 1, 1987, D.C. Law 7-27, § 2(f), 34 DCR 5079.)

Section references. — This section is referred to in §§ 1-610.63 and 1-702.

Prior Codifications. — 1981 Ed., § 1-623.3.

Legislative history of Law 7-27. — For legislative history of D.C. Law 7-27, see Historical and Statutory Notes following § 1-621.02.

§ 1-622.04. Definitions.

For the purposes of §§ 1-622.05 through 1-622.14, the term:

(1) "Annuitant" means:

(A) An employee first employed by the District after September 30, 1987, who has subsequently retired pursuant to any of the following:

- (i) Teachers' Retirement System (§§ 38-2001.01 to 38-2023.16);
- (ii) Police and Fire Retirement System (§§ 5-707 to 5-730);
- (iii) Judges' Retirement System (§§ 11-1561 to 11-1571); or
- (iv) Teachers' Insurance and Annuity Association programs; or

(B) An employee first employed by the District after September 30, 1987, who has subsequently separated pursuant to the District Retirement Benefit Program (§§ 1-626.03 to 1-626.14) after any of the following:

- (i) Reaching 57 years of age and having completed 25 years of creditable District service in a law enforcement position;
- (ii) Becoming entitled to retirement benefits under the Social Security Act; or
- (iii) Becoming entitled to disability benefits under the Social Security Act.

(2) "Dependent child" includes:

- (A) An adopted child; and
- (B) A stepchild, foster child, or natural child of an employee or annuitant.

(3) "Employee" means an individual first employed by the District after September 30, 1987.

(4) "Member of family" means:

- (A) The spouse of an employee or annuitant;
- (B) An unmarried dependent child under 22 years of age;
- (C) An unmarried dependent child under 25 years of age who is a full-time student; and

(D) An unmarried child regardless of age who is incapable of self-support because of mental or physical disability that existed before age 22.

(5) "Viatical settlement" means an irrevocable assignment of all an employee's or former employee's incidents of ownership in a life insurance policy.

(Mar. 3, 1979, D.C. Law 2-139, § 2204, as added Oct. 1, 1987, D.C. Law 7-27, § 2(f), 34 DCR 5079; Mar. 20, 1998, D.C. Law 12-65, § 2(a), 44 DCR 7608; Mar. 20, 1998, D.C. Law 12-66, § 2(b), 45 DCR 343.)

Prior Codifications. — 1981 Ed., § 1-623.4.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(b) of the Comprehensive Merit Personnel Act Health and Life Insurance Clarification Temporary Amendment Act of 1996 (D.C. Law 11-183, April 9, 1997, law notification 44 DCR 2378).

For temporary (225 day) amendment of section, see § 2(a) of the District of Columbia Employee Viatical Settlement Temporary Amendment Act of 1996 (D.C. Law 11-188, April 9, 1997, law notification 44 DCR 2383).

Emergency legislation. — For temporary amendment of section, see § 2(b) of the Com-

prehensive Merit Personnel Act Health Benefits and Life Insurance Clarification Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-27, March 11, 1997, 44 DCR 1892), and § 2(b) of the Comprehensive Merit Personnel Act Health and Life Insurance Clarification Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-213, December 5, 1997, 44 DCR 7615).

For temporary amendment of section, see § 2(a) of the District of Columbia Employee Viatical Settlement Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-26, March 11, 1997, 44 DCR 1890), and see § 2(a) of the Employee Viatical Settlement Legislative Review Emergency Amendment Act of

1997 (D.C. Act 12-212, December 5, 1997, 44 DCR 7613).

Legislative history of Law 7-27. — For legislative history of D.C. Law 7-27, see Historical and Statutory Notes following § 1-621.02.

Legislative history of Law 12-65. — Law 12-65, the “Comprehensive Merit Personnel Employee Viatical Settlement Amendment Act of 1997,” was introduced in Council and assigned Bill No. 12-228, which was referred to the Committee on Government Operations. The

Bill was adopted on first and second readings on October 7, 1997, and November 4, 1997, respectively. Signed by the Mayor on November 21, 1997, it was assigned Act No. 12-204 and transmitted to both Houses of Congress for its review. D.C. Law 12-65 became effective on March 20, 1998.

Legislative history of Law 12-66. — For legislative history of D.C. Law 12-66, see Historical and Statutory Notes following § 1-621.03.

§ 1-622.05. Contracting authority.

(a) The Mayor may purchase from 1 or more life insurance companies a policy or policies of group life insurance to provide the benefits set forth in § 1-622.07 from a life insurance company licensed to provide life and accidental death and dismemberment insurance under the laws of the District. Any contract under this section shall be in accordance with Chapter 3 of title 2.

(b) The Mayor may discontinue at any time a policy purchased from a company under subsection (a) of this section.

(Mar. 3, 1979, D.C. Law 2-139, § 2205, as added Oct. 1, 1987, D.C. Law 7-27, § 2(f), 34 DCR 5079.)

Section references. — This section is referred to in §§ 1-622.04, 1-622.06, 1-622.07, 1-622.09, 1-622.10, 1-622.11, 1-622.12, 1-622.13, and 1-622.14.

Prior Codifications. — 1981 Ed., § 1-623.5.

Legislative history of Law 7-27. — For legislative history of D.C. Law 7-27, see Historical and Statutory Notes following § 1-621.02.

§ 1-622.06. Automatic coverage; description of benefits.

(a) Except as provided in subsection (b) of this section, an employee is automatically insured on the date the employee becomes eligible for insurance. Each policy purchased by the Mayor under § 1-622.05 shall provide for this automatic coverage.

(b) An employee who does not wish to be insured shall give written notice to the employee’s employing office or such other office designated by the Mayor on a form prescribed by the Mayor. If notice is received before the employee becomes insured, then the employee shall not be insured. If notice is received after the employee has become insured, the insurance will end at the end of the pay period in which the notice was received.

(c) The Mayor shall make available to each insured employee or annuitant a written statement or summary of:

- (1) The benefits to which the employee, annuitant, or member of the family of the employee or annuitant are entitled;
- (2) The procedures for obtaining benefits; and
- (3) The principal provisions of the policy in effect.

(Mar. 3, 1979, D.C. Law 2-139, § 2206, as added Oct. 1, 1987, D.C. Law 7-27, § 2(f), 34 DCR 5079.)

Section references. — This section is referred to in § 1-622.04.

Prior Codifications. — 1981 Ed., § 1-623.6.

Legislative history of Law 7-27. — For legislative history of D.C. Law 7-27, see Historical and Statutory Notes following § 1-621.02.

§ 1-622.07. Group insurance; amounts.

(a) The group life insurance amounts purchased by the District under § 1-622.05 shall be no less than the insurance amounts provided under the Federal Employees Group Life Insurance ("F.E.G.L.I.") plan pursuant to 5 U.S.C. § 8702, in effect as of October 1, 1987.

(b) Employees shall be offered the option of purchasing additional coverage for themselves, and for their spouses and dependent children, and the cost of the additional coverage shall be borne solely by the employees purchasing that coverage, except Executive Service employees.

(Mar. 3, 1979, D.C. Law 2-139, § 2207, as added Oct. 1, 1987, D.C. Law 7-27, § 2(f), 34 DCR 5079; June 10, 1998, D.C. Law 12-124, § 101(w)(1), 45 DCR 2464.)

Section references. — This section is referred to in §§ 1-622.03, 1-622.04, and 1-622.05.

Prior Codifications. — 1981 Ed., § 1-623.7.

Legislative history of Law 7-27. — For legislative history of D.C. Law 7-27, see Historical and Statutory Notes following § 1-621.02.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Editor's notes. — For actual amounts under the Federal Employees Group Life Insurance plan referred to in (a), see 5 U.S.C. § 8704.

Applicability of § 101(w) of D.C. Law 12-124: Section 401(c) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(h), (l), (m), (n), (o)(2) through (5), (q), (r), (t), (u), (w), and (y) of the act shall apply as of October 21, 1998.

§ 1-622.08. Death claims; order of precedence; viatical settlements.

(a) Except as provided in subsection (a-1) of this section, the amount of group life insurance in force for an employee or annuitant at the date of the employee or annuitant death shall be paid, on the establishment of a valid claim, to the person or persons surviving at the date of the death of the employee or annuitant, in the following order of precedence:

(1) To the beneficiary or beneficiaries designated by the employee or annuitant in a signed and witnessed writing executed and filed before death;

(2) If there is no designated beneficiary, to the widow or widower of the employee or annuitant;

(3) If none of the above, to the child or children of the employee or annuitant and descendants of a deceased child or children by representation;

(4) If none of the above, to the parents or parent of the employee or annuitant;

(5) If none of the above, to the duly appointed personal representative of the estate of the employee or annuitant; or

(6) If none of the above, to the other next of kin of the employee or

annuitant under the laws of the domicile of the employee or annuitant at the date of death.

(a-1)(1) Except as provided in paragraph (2) of this subsection, pursuant to rules and regulations prescribed by the Mayor, each policy purchased pursuant to § 1-623.5 shall provide that an insured employee or former employee who is terminally ill may make a viatical settlement, which is an irrevocable assignment of all the employee's or former employee's incidents of ownership in the policy. The assignment shall automatically cancel any designation of beneficiary the insured person might have made, and the insured person shall no longer have the right to designate a beneficiary. The assignee shall assume the right to convert the insurance when the insured employee's employment circumstances would have provided this option to the insured employee.

(2) The assignment shall exclude accidental dismemberment insurance and family optional insurance.

(b) If no claim has been filed by any of the persons set forth in subsection (a) of this section or an assignee pursuant to subsection (a-1) of this section within 4 years of the date of death of an employee or annuitant, then the funds shall be deposited into the General Fund of the District of Columbia to be kept for safekeeping and disbursed in accordance with Chapter 1 of Title 41.

(Mar. 3, 1979, D.C. Law 2-139, § 2208, as added Oct. 1, 1987, D.C. Law 7-27, § 2(f), 34 DCR 5079; Mar. 20, 1998, D.C. Law 12-65, § 2(b), 44 DCR 7608.)

Section references. — This section is referred to in § 1-622.04.

Prior Codifications. — 1981 Ed., § 1-623.8.

Temporary Addition of Section. — For temporary (225 day) amendment of section, see § 2(b) of the District of Columbia Employee Viatical Settlement Temporary Amendment Act of 1996 (D.C. Law 11-188, April 9, 1997, law notification 44 DCR 2383).

Emergency legislation. — For temporary amendment of section, see § 2(b) of the District of Columbia Employee Viatical Settlement

Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-26, March 11, 1997, 44 DCR 1890), and § 2(b) of the Employee Viatical Settlement Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-212, December 5, 1997, 44 DCR 7613).

Legislative history of Law 7-27. — For legislative history of D.C. Law 7-27, see Historical and Statutory Notes following § 1-621.02.

Legislative history of Law 12-65. — For legislative history of D.C. Law 12-65, see Historical and Statutory Notes following § 1-622.04.

§ 1-622.09. Termination of insurance.

(a) A policy purchased under § 1-622.05 shall contain a provision, approved by the Mayor, providing that insurance on an employee ends 1 month after separation from the District or after discontinuance of pay, with provision for temporary extension of life insurance coverage and for conversion to an individual policy of life insurance under conditions approved by the Mayor.

(b) An employee in a group life insurance plan under § 1-622.05 who is removed or suspended without pay and later reinstated or restored to duty on the grounds that the removal or suspension was unwarranted or unjustified may, at the employee's option, enroll as a new employee or have the employee's coverage restored, with appropriate adjustments made in contributions and claims, to the same extent and effect as though the removal or suspension had not taken place.

(Mar. 3, 1979, D.C. Law 2-139, § 2209, as added Oct. 1, 1987, D.C. Law 7-27, § 2(f), 34 DCR 5079.)

Section references. — This section is referred to in § 1-622.04.

Prior Codifications. — 1981 Ed., § 1-623.9.

Legislative history of Law 7-27. — For legislative history of D.C. Law 7-27, see Historical and Statutory Notes following § 1-621.02.

§ 1-622.10. Employee deductions; withholdings; payments.

(a) During each pay period in which the employee or annuitant is insured under a policy of insurance purchased by the District under § 1-622.05, an amount determined by the Mayor shall be withheld from the compensation of the employee or the annuity of the annuitant as his or her share of the cost of the group life insurance benefits purchased under § 1-622.05. The amount withheld from an employee or annuitant paid on other than a biweekly basis shall be determined at a proportional rate adjusted to the nearest cent.

(b) During each pay period in which an employee receiving disability compensation benefits pursuant to subchapter XXIII of this chapter is insured under a policy of group life insurance purchased by the District under § 1-622.05, an amount determined by the Mayor shall be withheld from the disability compensation benefits of the individual as his or her share of the cost of the group insurance.

(c) There shall be paid by each annuitant who received his or her benefits as a lump sum payment an amount equal to the cost of the life insurance plan less the amount of the District contribution to the life insurance plan for the annuitant.

(Mar. 3, 1979, D.C. Law 2-139, § 2210, as added Oct. 1, 1987, D.C. Law 7-27, § 2(f), 34 DCR 5079; May 10, 1989, D.C. Law 7-231, § 3(2), 36 DCR 492.)

Section references. — This section is referred to in §§ 1-622.04 and 1-622.11.

Prior Codifications. — 1981 Ed., § 1-623.10.

Legislative history of Law 7-27. — For legislative history of D.C. Law 7-27, see Historical and Statutory Notes following § 1-621.02.

Legislative history of Law 7-231. — For legislative history of D.C. Law 7-231, see Historical and Statutory Notes following § 1-611.11.

§ 1-622.11. District contributions.

(a) For each pay period in which an employee or annuitant is insured under a policy of insurance purchased under § 1-622.05, a sum computed at a rate determined by the Mayor shall be contributed from the appropriation or fund that is used to pay the employee or annuitant to the carrier of the plan that the employee or annuitant has selected. This sum shall not exceed one-half the amount that is withheld from the compensation of the employee or annuitant under § 1-622.10 for basic life insurance coverage.

(b) The District's contribution for annuitants shall be paid from the trust fund established in § 1-621.09.

(Mar. 3, 1979, D.C. Law 2-139, § 2211, as added Oct. 1, 1987, D.C. Law 7-27, § 2(f), 34 DCR 5079; Mar. 7, 2000, D.C. Law 13-54, § 2(b), 46 DCR 9915.)

Section references. — This section is referred to in § 1-622.04.

Prior Codifications. — 1981 Ed., § 1-623.11.

Effect of amendments. — D.C. Law 13-54 designated the existing text as subsec. (a), and added subsec. (b).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(b) of the Annuitants' Health and Life Insurance Employer Contribution Temporary Amendment Act of 1999 (D.C. Law 12-278, April 27, 1999, law notification 46 DCR 4284).

Emergency legislation. — For temporary amendment of section, see § 2(b) of the Annuitants' Health and Life Insurance Employer Contribution Emergency Amendment Act of 1998 (D.C. Act 12-617, January 22, 1999, 46 DCR 1335).

For temporary (90-day) amendment of section, see § 2(b) of the Annuitants' Health and Life Insurance Employer Contribution Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-199, December 1, 1999, 46 DCR 10446).

For temporary (90-day) amendment of section, see § 2(b) of the Annuitants' Health and Life Insurance Employer Contribution Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-276, March 7, 2000, 47 DCR 2015).

Legislative history of Law 7-27. — For legislative history of D.C. Law 7-27, see Historical and Statutory Notes following § 1-621.02.

Legislative history of Law 13-54. — For Law 13-54, see notes following § 1-621.09.

§ 1-622.12. Annual accounting; reports.

(a) Each policy purchased by the District under § 1-622.05 shall provide for an accounting by the company from which the insurance was purchased to the Mayor not later than 90 days after the end of each policy year. The accounting shall set forth, in form approved by the Mayor:

(1) The amounts of premiums actually accrued under the policy from its date of issue to the end of the policy year;

(2) The total of all mortality and other claim charges incurred for that period; and

(3) The amounts of the company's expenses and risk charges incurred for that period.

(b) Each contract entered into under § 1-622.05 shall require the company to:

(1) Furnish reasonable reports as the Mayor determines to be necessary to enable the District to carry out its functions under this subchapter; and

(2) Permit the Mayor to examine records of the company as may be necessary to carry out the purposes of this subchapter.

(Mar. 3, 1979, D.C. Law 2-139, § 2212, as added Oct. 1, 1987, D.C. Law 7-27, § 2(f), 34 DCR 5079.)

Section references. — This section is referred to in §§ 1-622.04 and 1-622.13.

Prior Codifications. — 1981 Ed., § 1-623.12.

Legislative history of Law 7-27. — For legislative history of D.C. Law 7-27, see Historical and Statutory Notes following § 1-621.02.

§ 1-622.13. Special contingency reserve.

(a) An excess of the total of § 1-622.12(a)(1) over the sum of § 1-622.12(a)(2) and (a)(3) shall be held by the company issuing the policy as a special

contingency reserve to be used by the company only for charges under the policy purchased under § 1-622.05.

(b) The special contingency reserve shall bear interest at a rate determined in advance of each policy period by the company from which the insurance was purchased under § 1-622.05 and approved by the Mayor as being consistent with the rates generally used by the company from which the insurance was purchased under § 1-622.05 for similar funds held under other group life insurance policies.

(c) When the Mayor determines that the amount of the special contingency reserve is sufficient to provide for adverse fluctuations in future charges under the policy, any funds in excess of that amount may be used to increase benefits, to reduce premiums, or both, or may be deposited in the General Fund of the District.

(d) When a policy purchased under § 1-622.05 is discontinued, any balance remaining in the special contingency reserve after all charges have been paid shall be deposited in the General Fund of the District.

(e) When a policy purchased pursuant to § 1-622.05 is replaced by a successor policy, either by a new policy under a contract with the same life insurance company or by a policy under a new contract with another life insurance company, any balance remaining in the special contingency reserve shall be transferred to the special contingency reserve for the new policy.

(Mar. 3, 1979, D.C. Law 2-139, § 2213, as added Oct. 1, 1987, D.C. Law 7-27, § 2(f), 34 DCR 5079; Apr. 29, 1998, D.C. Law 12-89, § 2, 45 DCR 1306.)

Section references. — This section is referred to in § 1-622.04.

Prior Codifications. — 1981 Ed., § 1-623.13.

Legislative history of Law 7-27. — For legislative history of D.C. Law 7-27, see Historical and Statutory Notes following § 1-621.02.

Legislative history of Law 12-89. — Law 12-89, the “Life Insurance Special Contingency Reserve Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-162, which was referred to the Committee on Gov-

ernment Operations. The Bill was adopted on first and second readings on December 4, 1997, and January 6, 1998, respectively. Signed by the Mayor on January 26, 1998, it was assigned Act No. 12-262 and transmitted to both Houses of Congress for its review. D.C. Law 12-89 became effective on April 29, 1998.

Editor’s notes. — Application of 12-89: Section 4 of D.C. Law 12-89 provided that the provisions of § 2 of the act shall apply as of May 30, 1995.

§ 1-622.14. Rules; eligibility.

(a) In order to ensure proper implementation of the group life insurance under § 1-622.05 by October 1, 1987, the Mayor may issue temporary rules regarding the group life insurance that shall not be subject to Council review. These temporary rules shall remain in effect only until the proposed rules have been approved or been deemed approved by the Council in accordance with subsection (b) of this section.

(b) The Mayor shall, pursuant to subchapter I of Chapter 5 of Title 2, issue proposed rules to implement the provisions of this subchapter. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by

resolution within this 45-day review period, the proposed rules shall be deemed approved.

(c) The proposed rules shall prescribe the time, manner, and conditions under which employees are eligible for coverage. The proposed rules may exclude employees on the basis of the nature and type of employment or conditions of employment such as short-term appointment, seasonal employment, intermittent or part-time employment, and employment of a similar nature, but shall not exclude an employee or group of employees solely on the basis of the hazardous nature of employment.

(Mar. 3, 1979, D.C. Law 2-139, § 2214, as added Oct. 1, 1987, D.C. Law 7-27, § 2(f), 34 DCR 5079.)

Section references. — This section is referred to in § 1-622.04.

Prior Codifications. — 1981 Ed., § 1-623.14.

Legislative history of Law 7-27. — For legislative history of D.C. Law 7-27, see Historical and Statutory Notes following § 1-621.02.

§ 1-622.15. Disability income protection.

The Mayor shall establish a disability income program to include short- and long-term disability insurance which shall provide coverage for non-job-related injuries and illnesses.

(Mar. 3, 1979, D.C. Law 2-139, § 2215, as added June 10, 1998, D.C. Law 12-124, § 101(w)(2), 45 DCR 2464.)

Prior Codifications. — 1981 Ed., § 1-623.15.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Construction of Law 12-124. — Section 301 of D.C. Law 12-124 provided that nothing in the act shall be construed as superseding the provisions of the National Capital Revitalization and Self-Government Improvement Act of 1997, approved August 5, 1997 (Public Law 105-33; 111 Stat. 712), except that § 47-

395.04(b)(3) is expressly superseded. Further, nothing in the act shall be construed as superseding the provisions of § 47-391.01 et seq. or of § 164 of the District of Columbia Appropriations Act, 1998, approved November 19, 1997 (Public Law 105-100; 111 Stat. 2160).

Editor's notes. — Applicability of § 101 of D.C. Law 12-124: Section 401(c) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(h), (l), (m), (n), (o)(2) through (5), (q), (r), (t), (u), (w), and (y) of the act shall apply as of October 21, 1998.

§ 1-622.16. Post-employment benefits.

An annuitant may elect to convert group life insurance benefits authorized in § 1-622.03 to an individual policy upon separation from service.

(Mar. 3, 1979, D.C. Law 2-139, § 2216, as added Mar. 3, 2010, D.C. Law 18-111, § 1201(e), 57 DCR 181.)

Cross references. — Merit system, effective date provisions, see § 1-636.02.

Temporary Assistance for Needy Families program (TANF), workers' compensation coverage, see § 4-205.19k.

Emergency legislation. — For temporary

(90 day) addition, see § 1201(e) of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) addition, see § 1201(e) of Fiscal Year Budget Support Con-

gressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 18-111. — For Law 18-111, see notes following § 1-301.181.

Subchapter XXIII. Public Sector Workers' Compensation.

§ 1-623.01. Definitions.

For the purpose of this subchapter:

(1) The term “employee” means:

(A) A civil officer or employee in any branch of the District of Columbia government, including an officer or employee of an instrumentality wholly owned by the District of Columbia government;

(B) An individual rendering personal service to the District of Columbia government similar to the service of a civil officer or employee of the District of Columbia, without pay or for nominal pay, when a statute authorizes the acceptance or use of the service or authorizes payment of travel or other expenses of the individual, but does not include a member of the Metropolitan Police Department or the Fire Department of the District of Columbia who is pensioned or pensionable under §§ 5-707 through 5-730; and

(C) An individual selected pursuant to Chapter 121 of Title 28 of the United States Code and serving as a petit or grand juror and who is otherwise an employee for the purposes of this subchapter as defined by subparagraphs (A) and (B) of this paragraph.

(2) The term “physician” includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by law. The term “physician” includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist, and subject to rules and regulations issued by the Mayor.

(3) The term “medical, surgical, and hospital services and supplies” includes services and supplies by podiatrists, dentists, clinical psychologists, optometrists, chiropractors, osteopathic practitioners, and hospitals within the scope of their practice as defined by District or state law and as designated by the Mayor to provide services to injured employees. Reimbursable chiropractic services are limited to treatment consisting of manual manipulation of the spine, to correct a subluxation as demonstrated by X-ray to exist, and subject to rules and regulations issued by the Mayor.

(4) The term “monthly pay” means the monthly pay at the time of injury or the monthly pay at the time disability begins or the monthly pay at the time compensable disability recurs if the recurrence begins more than 6 months after the injured employee resumes regular full-time employment with the District, whichever is greater, except when otherwise determined under § 1-623.13 with respect to any period.

(5)(A) The term “injury” means:

(i) Accidental injury or death arising out of and in the course and scope of employment; and

(ii) Occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury.

(B) The term “injury” includes:

(i) An injury caused by the willful act of third persons directed against an employee because of his or her employment; and

(ii) Damage to, or destruction of, eyeglasses, hearing aids, medical braces, artificial limbs, and other medical devices and such time lost while such device or appliance is being replaced or repaired.

(6) Repealed.

(7) The term “parent” includes stepparents and parents by adoption.

(8) The terms “brother” and “sister” mean one who at the time of the death of the employee is under 18 years of age or over that age and incapable of self-support, and include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption, but does not include married brothers or married sisters.

(9) The term “child” means one who at the time of the death of the employee is under 18 years of age or over that age and incapable of self-support, and includes stepchildren, adopted children and posthumous children, but does not include married children.

(10) The term “grandchild” means one who at the time of the death of the employee is under 18 years of age or over that age and incapable of self-support.

(11) Repealed.

(12) The term “compensation” includes the money allowance payable to an employee or his or her dependents and any other benefits paid for from the Employees’ Compensation Fund, but this does not in any way reduce the amount of the monthly compensation payable for disability or death.

(13) The term “student” means an individual under 23 years of age who has not completed 4 years of education beyond the high school level and who is regularly pursuing a full-time course of study or training at an institution which is:

(A) A school, college, or university operated or directly supported by the United States, by the District, by a state or local government, or political subdivision thereof;

(B) A school, college, or university which has been accredited by the District, by a state, by a state-recognized or nationally-recognized accrediting agency or body;

(C) A school, college, or university not so accredited, but whose credits are accepted on transfer by at least 3 institutions which are so accredited for credit on the same basis as if transferred from an institution so accredited; or

(D) An additional type of educational or training institution as defined by the Mayor.

Such an individual is deemed not to have ceased to be a student during an interim between school years if the interim is not more than 4 months and if he or she shows, to the satisfaction of the Mayor, that he or she has a bona fide intention of continuing to pursue a full-time course of study or training during the semester or other enrollment period immediately after the interim or

during periods of reasonable duration during which, in the judgment of the Mayor, he or she is prevented by factors beyond his or her control from pursuing his or her education. A student whose 23rd birthday occurs during a semester or other enrollment period is deemed a student until the end of the semester or other enrollment period.

(14) Repealed.

(15) Repealed.

(16) The term “organ” means a part of the body that performs a special function, and for purposes of this subchapter excludes the brain, heart, and back.

(17) “Utilization review” means the evaluation of the necessity, character, and sufficiency of both the level and quality of medically related services provided an injured employee based upon medically related standards.

(18)(A) The term “managed care organization” means an organization of physicians and allied health professionals organized to and capable of providing systematic and comprehensive medical care and treatment of injured employees which is designated by the Mayor to provide such care and treatment under this subchapter.

(B) The term “allied health professional” means a medical care provider (including a nurse, physical therapist, laboratory technician, X-ray technician, social worker, or other provider who provides such care within the scope of practice under applicable law) who is employed by or affiliated with a managed care organization.

(19) The term “claimant” means a person who has applied for benefits under this subchapter.

(20) Repealed.

(21) The term “surviving spouse or domestic partner” means the spouse or domestic partner living with or dependent for support on the decedent at the time of his or her death, or living apart for reasonable cause or because of his or her desertion.

(22) The term “accident” means an unexpected traumatic event during a single work shift identifiable by time and place of occurrence and producing objective symptoms of an injury.

(Mar. 3, 1979, D.C. Law 2-139, § 2301, 25 DCR 5740; Mar. 6, 1991, D.C. Law 8-198, § 3(a), 37 DCR 6890; Sept. 26, 1995, D.C. Law 11-52, § 810(a), 42 DCR 3684; Nov. 19, 1997, 111 Stat. 2181, Pub. L. 105-100, § 150(c)(4); Mar. 26, 1999, D.C. Law 12-175, § 2102(a), 45 DCR 7193; Oct. 3, 2001, D.C. Law 14-28, § 1203(a), 48 DCR 6981; Mar. 13, 2004, D.C. Law 15-105, § 2(c), 51 DCR 881; Sept. 12, 2008, D.C. Law 17-231, § 3(f), 55 DCR 6758; Sept. 24, 2010, D.C. Law 18-223, § 1062(b)(2), 57 DCR 6242.)

Section references. — This section is referred to in §§ 1-623.10, 1-623.18, 1-623.33, and 4-205.19k.

Prior Codifications. — 1981 Ed., § 1-624.1.

1973 Ed., § 1-353.1.

Effect of amendments. — D.C. Law 14-28 repealed par. (20) which had read as follows:

“(20) The term ‘Director’ means the Director, Department of Employment Services.”

D.C. Law 15-105 validated a previously made technical correction.

D.C. Law 17-231 repealed pars. (6) and (11); and added par. (21).

D.C. Law 18-223 rewrote par. (5); and added par. (22). Prior to amendment, par. (5) read as

follows: “(5) The term ‘injury’ includes, in addition to injury by accident, a disease proximately caused by the employment and damage to or destruction of medical braces, artificial limbs, and other prosthetic devices which shall be replaced or repaired, and such time lost while such device or appliance is being replaced or repaired; except, that eyeglasses and hearing aids would not be replaced, repaired, or otherwise compensated for, unless the damage or destruction is incident to a personal injury requiring medical services.”

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 805(a) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

Emergency legislation. — For temporary amendment of section, see § 1702(a) of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), and § 1702(a) of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

For temporary (90-day) amendment of section, see § 1702(a) of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1999 (D.C. Act 13-41, March 31, 1999, 46 DCR 3446).

For temporary (90 day) amendment of section, see § 1103(a) of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

For temporary (90 day) amendment of section, see § 1062(b)(2) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 8-198. — Law 8-198 was introduced in Council and assigned Bill No. 8-74, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on September 25, 1990, and October 9, 1990, respectively. Signed by the Mayor on October 24, 1990, it was assigned Act No. 8-261

and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 1-603.01.

Legislative history of Law 12-175. — For legislative history of D.C. Law 12-175, see Historical and Statutory Notes following § 1-603.01.

Legislative history of Law 14-28. — For Law 14-28, see notes following § 1-604.06.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 1-301.47.

Legislative history of Law 17-231. — For Law 17-231, see notes following § 1-301.45.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 1-301.78.

Short title. — Short title: Section 1061 of D.C. Law 18-223 provided that subtitle G of title I of the act may be cited as the “Disability Compensation Amendment Act of 2010”.

Editor’s notes. — Mayor authorized to issue rules: Section 4 of D.C. Law 8-198 provided that “(a) The Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1, issue rules to implement the provisions of this act within 90 days from the date of enactment of this act. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

“(b) The proposed rules shall include standards for:

“(1) A coding system for medical reports and bills; and

“(2) The implementation of utilization review.”

Application of § 150(c) of Pub. L. 105-100: Section 150(c)(5) of Pub. L. 105-100, 111 Stat. 2181, the District of Columbia Appropriations Act, 1998, provided that the amendments made by subsection (c) shall apply with respect to services, supplies, or appliances furnished under title XXIII of the District of Columbia Merit Personnel Act of 1978 on or after the date of the enactment of this Act. Public Law 105-100 was approved November 19, 1997.

§ 1-623.02. Compensation for disability or death of employee.

(a) The District of Columbia government shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of his or her duty, unless the injury or death is:

(1) Caused by willful misconduct of the employee;

(2) Caused by the employee's intention to bring about the injury or death of himself or herself or of another; or

(3) Proximately caused by the intoxication of the injured employee.

(b) No claim shall be allowed under this chapter for mental stress or an emotional condition or disease resulting from a reaction to the work environment or to an action taken or proposed by the employing agency involving the following:

(1) Employee's work performance, assignments, or duties;

(2) Promotion or denial of promotion;

(3) Adverse personnel action;

(4) Transfer;

(5) Retrenchment or dismissal; or

(6) Provision of employment benefits.

(c) Pursuant to § 1-602.04(a), the limitation of liability described in subsection (b) of this section shall not apply to an employee whose date of hire was before January 1, 1980.

(Mar. 3, 1979, D.C. Law 2-139, § 2302, 25 DCR 5740; Sept. 24, 2010, D.C. Law 18-223, § 1062(b)(3), 57 DCR 6242.)

Section references. — This section is referred to in § 1-623.01.

Prior Codifications. — 1981 Ed., § 1-624.2.

1973 Ed., § 1-353.2.

Effect of amendments. — D.C. Law 18-223 designated the existing text as subsec. (a); and added subsecs. (b) and (c).

Emergency legislation. — For temporary (90 day) amendment of section, see

§ 1062(b)(3) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 1-301.78.

CASE NOTES

ANALYSIS

In general.

Psychological injuries.

Remedial orders.

In general.

An insurance carrier could draft a contract which provided for a reduction of the policy limit by any amount received in compensation for the injuries inflicted by an uninsured motorist, including worker's compensation. *Millender v. Nationwide Ins. Co.*, 119 WLR 1953 (Super. Ct. 1991).

Psychological injuries.

Objective test for determining entitlement to compensation for psychological injuries, which requires an employee to show that an average person not predisposed to such injury would have suffered a similar injury, does not apply to workers' compensation cases that involve psychological injuries that result from accidental physical injuries occurring in the workplace;

abrogating *Landesberg v. District of Columbia Dept. of Employment Services.*, 794 A.2d 607, and *Porter v. District of Columbia Dept. of Employment Services.*, 625 A.2d 886. *McCamey v. D.C. Dep't of Empl. Servs.*, 947 A.2d 1191, 2008 D.C. App. LEXIS 239 (2008).

Remedial orders.

On motion for clarification of scope of class members who had to be immediately reinstated under earlier remedial order to District of Columbia disability compensation program, prospective relief was not to be read to cover deceased class members, who, while they might still be entitled to retroactive compensatory damages, were not eligible for continuing benefits, individuals who had been upwardly modified and therefore lacked standing under Lujan decision of United States Supreme Court, meaning that court's references to "modification" applied in practice to "reduction," and current employees who had returned to work, and therefore were not likely to accept temporary benefits pending government defendants'

compliance in lieu of their salaries; however, reinstatement remedy still applied to class members who were otherwise eligible even if those claimants sought review of termination

decisions on reconsideration or appeal. *Lightfoot v. District of Columbia*, 355 F.Supp.2d 414, 2005 U.S. Dist. LEXIS 1195 (2005).

§ 1-623.02a. Administration.

The Mayor shall administer and decide all questions arising under this chapter. The Mayor may delegate to the City Administrator any of the powers conferred on him or her by this chapter, except disability compensation hearings and adjudication powers, pursuant to § 1-623.28, which shall be exercised by the Director of the Department of Employment Services.

(Mar. 3, 1979, D.C. Law 2-139, § 2302a, as added Oct. 3, 2001, D.C. Law 14-28, § 1203(b), 48 DCR 6981; Nov. 13, 2003, D.C. Law 15-39, § 2003, 50 DCR 5668.)

Effect of amendments. — D.C. Law 15-39 substituted “to the City Administrator” for “to the Director of Personnel”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3 of Disability Compensation Program Transfer Temporary Amendment Act of 2002 (D.C. Law 14-202, October 17, 2002, law notification 49 DCR 12020).

Emergency legislation. — For temporary (90 day) addition of section, see § 1103(b) of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

For temporary (90 day) transfer of property, records, and unexpended funds to the Office of Risk Management, see § 3 of Disability Compensation Program Transfer Emergency Amendment Act of 2002 (D.C. Act 14-400, June 26, 2002, 49 DCR 6526).

For temporary (90 day) amendment of section, see § 3 of Disability Compensation Program Transfer Congressional Review Emer-

gency Amendment Act of 2002 (D.C. Act 14-476, October 3, 2002, 49 DCR 9568).

For temporary (90 day) amendment of section, see § 3 of Disability Compensation Program Transfer and Risk Management Emergency Amendment Act of 2003 (D.C. Act 15-88, May 19, 2003, 50 DCR 4330).

For temporary (90 day) amendment of section, see § 3 of Disability Compensation Program Transfer and Risk Management Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-128, July 29, 2003, 50 DCR 6836).

For temporary (90 day) amendment of section, see § 3 of Disability Compensation Program Transfer and Risk Management Second Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-172, October 6, 2003, 50 DCR 9173).

Legislative history of Law 14-28. — For Law 14-28, see notes following § 1-604.06.

Legislative history of Law 15-39. — For Law 15-39, see notes following § 1-204.42.

§ 1-623.02b. Functions — Disability compensation.

The functions of the program shall be to:

- (1) Establish appropriate systems and procedures for the reporting of occupational accidents and illnesses;
- (2) Maintain and analyze records of all occupational accidents and illnesses occurring within agencies;
- (3) Study safety problems and recommend actions to correct undesirable conditions or unsafe practices;
- (4) Monitor and evaluate adequacy and effectiveness of safety procedures and practices of District agencies through inspection;
- (5) Make determinations and awards for, or against payment of compensation under this chapter;
- (6) Pay compensation to employees for work related disability or death

resulting from personal injury sustained in the performance of their duty, as specified in this section;

(7) Conduct promotional campaigns to stimulate employees' interest in accident prevention and to train and motivate supervisors in accident prevention concepts, practices and techniques;

(8) Develop and maintain working agreements with designated physicians and other public or private organizations, as required; and

(9) Monitor the adequacy and effectiveness of medical services under this section, and develop guidelines for the determination of disabilities and professional fees.

(Mar. 3, 1979, D.C. Law 2-139, § 2302b, as added Oct. 3, 2001, D.C. Law 14-28, § 1203(b), 48 DCR 6981.)

Emergency legislation. — For temporary (90 day) addition of section, see § 1103(b) of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

Legislative history of Law 14-28. — For Law 14-28, see notes following § 1-604.06.

§ 1-623.03. Medical services and initial medical and other benefits.

(a) The District government shall furnish to an employee who is injured while in the performance of duty the services, appliances, and supplies prescribed or recommended by a qualified physician, who is approved by the Mayor or his or her designee pursuant to subsection (d) of this section, which the Mayor considers likely to cure, give relief, reduce the degree or period of disability, or aid in lessening the amount of the monthly compensation. These services, appliances, and supplies shall be furnished:

(1) Whether or not disability has arisen;

(2) Notwithstanding that the employee has accepted or is entitled to receive benefits under subchapter III of Chapter 83 of Title 5 of the United States Code, or another retirement system for employees of the District or federal government; and

(3) By or on the order of the District of Columbia government medical officers and hospitals, or by or on the order of a physician or managed care organization designated or approved by the Mayor.

The employee may initially select a physician to provide medical services, appliances, and supplies in accordance with such rules and regulations and instructions as the Mayor considers necessary, and may be furnished necessary and reasonable transportation and expenses incident to the securing of such services, appliances, and supplies. These expenses, when authorized or approved by the Mayor, shall be paid from the Employees' Compensation Fund.

(b) The Mayor, under such limitations or conditions as he or she considers necessary, may authorize the employing agencies to provide for the initial furnishing of medical and other benefits under this section. The Mayor may certify vouchers for these expenses out of the Employees' Compensation Fund when the immediate superior of the employee certifies that the expense was

incurred in respect to an injury accepted by the employing agency as properly compensable under this subchapter. The Mayor shall prescribe the form and content of the certificate.

(c) Repealed.

(d)(1) An employee to whom services, appliances, or supplies are furnished pursuant to subsection (a) of this section shall be provided with such services, appliances, and supplies (including reasonable transportation incident thereto) by a managed care organization or other health care provider designated by the Mayor or his or her designee, in accordance with such rules, regulations, and instructions as the Mayor considers appropriate. Any health care provider who is a member of such managed care organization shall apply in writing to the Mayor or his or her designee, and be approved by the Mayor or his or her designee prior to providing any services, appliances, or supplies pursuant to this section.

(2) Any expenses incurred as a result of furnishing services, appliances, or supplies which are authorized by the Mayor under paragraph (1) of this section shall be paid from the Employees' Compensation Fund.

(3) Any medical service provided pursuant to this subsection shall be subject to utilization review under § 1-623.23.

(e) The District government shall furnish or authorize payment for services, appliances, supplies, and reasonable transportation and expenses incidental thereto, to the injured employee within 30 days after the Mayor or his or her designee receives notice that the employee has been injured while in the performance of duty.

(f) The Mayor or his or her designee shall provide a claimant with written authorization for payment for any treatment or procedure within 30 days after the treating physician makes a written request to the Mayor or his or her designee for this authorization. If the Mayor or his or her designee fails to provide written authorization to the claimant within 30 days of the request, the treatment or procedure shall be deemed authorized, unless the Mayor or his or her designee commences a utilization review pursuant to § 1-623.23(a-2) within 30 days of the request.

(Mar. 3, 1979, D.C. Law 2-139, § 2303, 25 DCR 5740; Mar. 6, 1991, D.C. Law 8-198, § 3(b), 37 DCR 6890; Sept. 26, 1995, D.C. Law 11-52, § 810(b), 42 DCR 3684; Nov. 19, 1997, 111 Stat. 2181, Pub. L. 105-100, §§ 150(c)(1), (2); Mar. 26, 1999, D.C. Law 12-175, § 2102(b), 45 DCR 7193; Apr. 20, 1999, D.C. Law 12-264, § 5(d), 46 DCR 2118; Apr. 12, 2000, D.C. Law 13-91, §§ 160(a), 162, 163, 47 DCR 520; Apr. 5, 2005, D.C. Law 15-290, § 2(a), 52 DCR 1449.)

Cross references. — Health care assistance reimbursement, rights to reimbursement, see § 4-601 et seq.

Section references. — This section is referred to in §§ 1-623.01 and 1-623.17.

Prior Codifications. — 1981 Ed., § 1-624.3.

1973 Ed., § 1-353.3.

Effect of amendments. — D.C. Law 13-91

validated previously made technical amendments.

D.C. Law 15-290 added subsecs. (e) and (f).

Emergency legislation. — For temporary amendment of section, see § 1702(b) of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), and § 1702(b) of the Fiscal Year 1999 Budget Support Congressional Review

Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

For temporary (90-day) amendment of section, see § 1702(b) of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1999 (D.C. Act 13-41, March 31, 1999, 46 DCR 3446).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 8-198. — For legislative history of D.C. Law 8-198, see Historical and Statutory Notes following § 1-623.01.

Legislative history of Law 10-253. — For legislative history of D.C. Law 10-253, see Historical and Statutory Notes following § 1-623.01.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 1-603.01.

Legislative history of Law 12-175. — For legislative history of D.C. Law 12-175, see Historical and Statutory Notes following § 1-603.01.

Legislative history of Law 12-264. — For legislative history of D.C. Law 12-264, see His-

torical and Statutory Notes following § 1-603.01.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-602.03.

Legislative history of Law 15-290. — Law 15-290, the “Disability Compensation Effective Administration Amendment Act of 2004”, was introduced in Council and assigned Bill No. 15-873, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 9, 2004, and December 7, 2004, respectively. Signed by the Mayor on January 4, 2005, it was assigned Act No. 15-685 and transmitted to both Houses of Congress for its review. D.C. Law 15-290 became effective on April 5, 2005.

Editor’s notes. — Mayor authorized to issue rules: See Historical and Statutory Notes following § 1-623.01.

Application of § 150(c) of Pub. L. 105-100: Section 150(c)(5) of Pub. L. 105-100, 111 Stat. 2181, the District of Columbia Appropriations Act, 1998, provided that the amendments made by subsection (c) shall apply with respect to services, supplies, or appliances furnished under title XXIII of the District of Columbia Merit Personnel Act of 1978 on or after the date of the enactment of this Act. Public Law 105-100 was approved November 19, 1997.

§ 1-623.04. Vocational rehabilitation.

(a) The Mayor shall direct an individual with a permanent or temporary disability whose disability is compensable under this subchapter to undergo vocational rehabilitation. The Mayor shall provide for furnishing the vocational rehabilitation services. In providing for these services, the Mayor, insofar as practicable, shall use the services or facilities of the District of Columbia government. The cost of providing these services to individuals undergoing vocational rehabilitation under this section shall be paid from the Employees’ Compensation Fund.

(b) Notwithstanding § 1-623.06, individuals directed to undergo vocational rehabilitation by the Mayor, while undergoing such rehabilitation, shall receive compensation at the rate provided in §§ 1-623.05 and 1-623.10, less the amount of any earnings received from remunerative employment other than employment undertaken pursuant to such rehabilitation.

(c) The initial vocational rehabilitation services provided pursuant to this section shall be for a period not to exceed 90 days after the claimant reaches maximum medical improvement and vocational rehabilitation is initiated.

(d) After the initial 90-day period has expired, the vocational rehabilitation services may be extended, at the discretion of the Mayor, for good cause shown, for incremental periods of 90 days, not to exceed one year from the initiation of the initial vocational rehabilitation plan.

(Mar. 3, 1979, D.C. Law 2-139, § 2304, 25 DCR 5740; Oct. 3, 2001, D.C. Law 14-28, § 1203(c), 48 DCR 6981; Apr. 24, 2007, D.C. Law 16-305, § 3(g), 53 DCR 6198; Sept. 24, 2010, D.C. Law 18-223, § 1062(b)(4), 57 DCR 6242.)

Section references. — This section is referred to in §§ 1-623.01, 1-623.11, 1-623.13, and 1-623.17.

Prior Codifications. — 1981 Ed., § 1-624.4.

1973 Ed., § 1-353.4.

Effect of amendments. — D.C. Law 14-28, in subsec. (a), substituted “shall direct a permanently or temporarily” for “may direct a permanently”.

D.C. Law 16-305, in subsec. (a), substituted “an individual with a permanent or temporary disability” for “a permanently or temporarily disabled individual”.

D.C. Law 18-223 added subsecs. (c) and (d).

Emergency legislation. — For temporary (90 day) amendment of section, see § 1103(c) of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

For temporary (90 day) amendment of section, see § 1062(b)(4) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 14-28. — For Law 14-28, see notes following § 1-604.06.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 1-307.02.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 1-301.78.

Editor's notes. — Establishment and Appointments—D.C. State Rehabilitation Council, see Mayor's Order 2001-173, November 30, 2001 (48 DCR 11586).

§ 1-623.05. Total disability.

(a) If the disability is total, subject to the limitations in § 1-623.06a, the District government shall pay the employee during the disability monthly monetary compensation equal to 66⅔ percent of his or her monthly pay, which shall be known as his or her basic compensation for total disability.

(b) The loss of use of both hands, both arms, both feet, or both legs or the loss of sight of both eyes is *prima facie* permanent total disability.

(Mar. 3, 1979, D.C. Law 2-139, § 2305, 25 DCR 5740; Sept. 24, 2010, D.C. Law 18-223, § 1062(b)(5), 57 DCR 6242.)

Section references. — This section is referred to in §§ 1-623.01, 1-623.04, 1-623.07, and 1-623.10.

Prior Codifications. — 1981 Ed., § 1-624.5.

1973 Ed., § 1-353.5.

Effect of amendments. — D.C. Law 18-223, in subsec. (a), substituted “, subject to the limitations in § 1-623.06a, the District government” for “the District of Columbia government”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 1062(b)(5) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 1-301.78.

CASE NOTES

In general.

Intentional infliction of emotional distress to police officer as result of transfer from recruitment division allegedly due to homosexual orientation was not “personal injury” within meaning of Merit Personnel Act, was not “disability” resulting from personal injury for which Act provided guaranteed compensation,

and, therefore, was not barred by exclusivity provision of Act. D.C. Code 1981, §§ 1-624.1, 1-624.1(1, 5), 1-624.2, 1-624.5, 1-624.6, 1-624.16, 1-624.16(c), 1-624.46; 5 U.S.C. §§ 8116(c), 8128. *Newman v. District of Columbia*, 518 A.2d 698, 1986 D.C. App. LEXIS 484 (1986).

§ 1-623.06. Partial disability.

(a) If the disability is partial, the subject to limitations in § 1-623.06a, the

District government shall pay the employee during the disability monthly monetary compensation equal to 66 $\frac{2}{3}$ percent of the difference between his or her monthly pay and his or her monthly wage-earning capacity after the beginning of the partial disability. This shall be known as his or her basic compensation for partial disability.

(b) The Mayor shall require each employee receiving benefits under this subchapter to report his or her earnings from employment or self-employment by affidavit, including by providing copies of tax documents and authorizing the Mayor to obtain copies of tax documents, within 30 days of a written request for a report of earnings.

(1) Fails to make an affidavit or report when required; or

(2) Knowingly omits or understates any part of his or her earnings, forfeits his or her right to compensation with respect to any period for which the affidavit or report was required. Compensation forfeited under this subsection, if already paid, shall be recovered by a deduction from the compensation payable to the employee or otherwise recovered under § 1-623.29, unless recovery is waived under that section.

(c) An employee with a partial disability who:

(1) Refuses to seek suitable work; or

(2) Refuses or neglects to work after suitable work is offered to, procured by, or secured for him or her is not entitled to compensation and such payment shall be suspended.

(Mar. 3, 1979, D.C. Law 2-139, § 2306, 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(p), 27 DCR 2632; Oct. 3, 2001, D.C. Law 14-28, § 1203(d), 48 DCR 6981; Apr. 24, 2007, D.C. Law 16-305, § 3(h), 53 DCR 6198; Sept. 24, 2010, D.C. Law 18-223, § 1062(b)(6), 57 DCR 6242.)

Section references. — This section is referred to in §§ 1-623.01, 1-623.04, 1-623.07, and 1-623.10.

Prior Codifications. — 1981 Ed., § 1-624.6.

1973 Ed., § 1-353.6.

Effect of amendments. — D.C. Law 14-28, in subsec. (b), substituted “shall require each employee” for “may require a partially disabled employee”.

D.C. Law 16-305, in subsec. (c), substituted “An employee with a partial disability” for “A partially disabled employee”.

D.C. Law 18-223, in subsec. (a), substituted “, subject to the limitations in § 1-623.06a, the District government” for “the District of Columbia government”.

Temporary Amendment of Section. — Section 2(a) of D.C. Law 19-69 repealed subsec. (b).

Section 4(b) of D.C. Law 19-69 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 1103(d) of Fiscal Year 2002 Budget Support Emergency

Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

For temporary (90 day) amendment of section, see § 1062(b)(6) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

For temporary (90 day) amendment of section, see § 2(a) of Public Sector Workers' Compensation Return to Work Clarifying Emergency Amendment Act of 2011 (D.C. Act 19-158, October 11, 2011, 58 DCR 8881).

For temporary (90 day) amendment of section, see § 1032(a) of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) amendment of section, see § 1032(a) of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 3-81. — For legislative history of D.C. Law 3-81, see Historical and Statutory Notes following § 1-602.02.

Legislative history of Law 14-28. — For Law 14-28, see notes following § 1-604.06.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 1-307.02.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 1-301.78.

CASE NOTES

In general.

Intentional infliction of emotional distress to police officer as result of transfer from recruitment division allegedly due to homosexual orientation was not “personal injury” within meaning of Merit Personnel Act, was not “disability” resulting from personal injury for which Act provided guaranteed compensation,

and, therefore, was not barred by exclusivity provision of Act. D.C. Code 1981, §§ 1-624.1, 1-624.1(1, 5), 1-624.2, 1-624.5, 1-624.6, 1-624.16, 1-624.16(c), 1-624.46; 5 U.S.C. §§ 8116(c), 8128. *Newman v. District of Columbia*, 518 A.2d 698, 1986 D.C. App. LEXIS 484 (1986).

§ 1-623.06a. Period of disability payments.

(a) Except as provided in subsection (b) of this section, for any one injury causing temporary total or temporary partial disability, the payment for disability benefits shall not continue for more than a total of 500 weeks; provided, that within the last 52 weeks, the claimant shall be entitled to a hearing before an Office of Administrative Hearings judge for purposes of determining whether the claimant has a permanent disability. The hearing shall be conducted pursuant to the provisions of § 1-623.24(b). Within 30 days after the hearing, the Mayor shall notify the claimant, the Attorney General, and the Office of Personnel in writing of his or her decision and any permanent disability award that he or she may make and the basis of the decision.

(b) Subsection (a) of this section shall not apply to any employee whose date of hire was before January 1, 1980.

(c) Subsection (a) shall apply one year after September 24, 2010.

(Mar. 3, 1979, D.C. Law 2-139, § 2306a, as added Sept. 24, 2010, D.C. Law 18-223, § 1062(b)(7), 57 DCR 6242.)

Temporary Addition of Section. — Section 2(b) of D.C. Law 19-69 added a section to read as follows:

“Sec. 2306b. Earnings affidavit.

“(a) The Mayor shall require each employee receiving benefits under this title to report his or her earnings from employment or self-employment, by affidavit or otherwise, including by providing copies of tax documents or authorization for the Mayor to obtain copies of tax documents, in the manner and at the times the Mayor specifies. The employee shall include in the affidavit or report the value of housing, board, lodging, and other advantages which are part of his or her earnings in employment or self-employment and which can be estimated in money.

“(b) An employee forfeits his or her right to compensation with respect to any period for which the affidavit or report was required if the employee:

“(1) Fails to file a complete affidavit or report when required; or

“(2) Knowingly omits or understates any part of his or her earnings.

“(c) Compensation forfeited under this section, if already paid, shall be recovered by a deduction from the compensation payable to the employee or otherwise recovered under section 2329 unless recovery is waived under that section.”

Section 4(b) of D.C. Law 19-69 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition of section, see § 1062(b)(7) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

For temporary (90 day) addition of section, see § 2(b) of Public Sector Workers' Compensation Return to Work Clarifying Emergency

Amendment Act of 2011 (D.C. Act 19-158, October 11, 2011, 58 DCR 8881).

Legislative history of Law 18-223. — For Law 18-223, see notes following § 1-301.78.

§ 1-623.07. Compensation schedule.

(a) If there is permanent disability involving the loss, or loss of use, of a member or function of the body or disfigurement, the employee is entitled to basic compensation for the disability, as provided by the schedule in subsection (c) of this section, at the rate of $66\frac{2}{3}$ percent of his or her monthly pay. The basic compensation shall be:

(1) Payable regardless of whether the cause of the disability originates in a part of the body other than that member;

(2) Payable regardless of whether the disability also involves another impairment of the body; and

(3) In addition to compensation for temporary total or temporary partial disability.

(b) With respect to any period after payments under subsection (a) of this section have ended, an employee is entitled to compensation as provided by the following:

(1) Section 1-623.05, if the disability is total; or

(2) Section 1-623.06, if the disability is partial.

(c) The compensation schedule is as follows:

(1) Arm lost, 312 weeks' compensation;

(2) Leg lost, 288 weeks' compensation;

(3) Hand lost, 244 weeks' compensation;

(4) Foot lost, 205 weeks' compensation;

(5) Eye lost, 160 weeks' compensation;

(6) Thumb lost, 75 weeks' compensation;

(7) First finger lost, 46 weeks' compensation;

(8) Great toe lost, 38 weeks' compensation;

(9) Second finger lost, 30 weeks' compensation;

(10) Third finger lost, 25 weeks' compensation;

(11) Toe other than great toe lost, 16 weeks' compensation;

(12) Fourth finger lost, 15 weeks' compensation;

(13) Loss of hearing:

(A) Complete loss of hearing of 1 ear, 52 weeks' compensation; or

(B) Complete loss of hearing of both ears, 200 weeks' compensation;

(14) Compensation for loss of binocular vision or for loss of 80 percent or more of the vision of any eye is the same as for loss of the eye;

(15) Compensation for loss of more than 1 phalanx of a digit is the same as for loss of the entire digit. Compensation for loss of the 1st phalanx is one-half of the compensation for loss of the entire digit;

(16) If, in the case of an arm or a leg, the member is amputated above the wrist or ankle, compensation is the same as for loss of the arm or leg, respectively;

(17) Compensation for loss of use of 2 or more digits or 1 or more phalanges of each of 2 or more digits of a hand or foot is proportioned to the loss of the use of the hand or foot occasioned thereby;

(18) Compensation for permanent total loss of use of a member is the same as for loss of the member;

(19) Compensation for permanent partial loss of use of a member may be for proportionate loss of use of the member. The degree of loss of vision or hearing under this schedule is determined without regard to correction;

(20) In case of loss of use of more than 1 member or parts of more than 1 member as enumerated by this schedule, the compensation is for loss of the use of each member or part thereof and the awards run consecutively. When the injury affects only 2 or more digits of the same hand or foot, paragraph (17) of this subsection applies, and when partial bilateral loss of hearing is involved, compensation is computed on the loss as affecting both ears;

(21) For serious disfigurement of the face, head, or neck of a character likely to handicap an individual in securing or maintaining employment, proper and equitable compensation not to exceed \$7,500 shall be awarded in addition to any other compensation payable under this schedule; or

(22) For permanent loss or loss of use of any other important external or internal organ of the body, as determined by the Mayor, proper and equitable compensation not to exceed 312 weeks for each organ so determined shall be paid in addition to any other compensation payable under this schedule.

(d) If medical records or other objective evidence substantiate a pre-existing impairment or other impairments or conditions unrelated to the work-related injury, the Mayor shall apportion the pre-existing or unrelated medical impairment from that of the current work-related injury or occupational disease in accordance with American Medical Association Guides to the Evaluation of Permanent Impairment ("AMA Guides"). In making this determination, the Mayor shall consider medical reports by physicians with specific training and experience in the use of the AMA Guides.

(Mar. 3, 1979, D.C. Law 2-139, § 2307, 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(q), 27 DCR 2632; Mar. 6, 1991, D.C. Law 8-198, § 3(c), 37 DCR 6890; Sept. 24, 2010, D.C. Law 18-223, § 1062(b)(8), 57 DCR 6242.)

Section references. — This section is referred to in §§ 1-623.01, 1-623.08 to 1-623.10, 1-623.15, and 1-623.16.

Prior Codifications. — 1981 Ed., § 1-624.7.

1973 Ed., § 1-353.7.

Effect of amendments. — D.C. Law 18-223 added subsec. (d).

Emergency legislation. — For temporary (90 day) amendment of section, see § 1062(b)(8) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see His-

torical and Statutory Notes following § 1-601.01.

Legislative history of Law 3-81. — For legislative history of D.C. Law 3-81, see Historical and Statutory Notes following § 1-602.02.

Legislative history of Law 8-198. — For legislative history of D.C. Law 8-198, see Historical and Statutory Notes following § 1-623.01.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 1-301.78.

Editor's notes. — Mayor authorized to issue rules: See Historical and Statutory Notes following § 1-623.01.

§ 1-623.08. Reduction of compensation for subsequent injury to same member.

The period of compensation payable under the schedule in § 1-623.07 is

reduced by the period of compensation paid or payable under the schedule for an earlier injury if: (1) Compensation in both cases is for disability of the same member or function or different parts of the same member or function or for disfigurement; and (2) the Mayor finds that compensation payable for the later disability, in whole or in part, would duplicate the compensation payable for the preexisting disability. In such a case, compensation for disability continuing after the scheduled period starts on the expiration of that period as reduced under this section.

(Mar. 3, 1979, D.C. Law 2-139, § 2308, 25 DCR 5740.)

Section references. — This section is referred to in § 1-623.01.

Prior Codifications. — 1981 Ed., § 1-624.8.
1973 Ed., § 1-353.8.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

§ 1-623.09. Beneficiaries of awards unpaid at death; order of precedence.

(a) If an individual: (1) Has sustained disability compensable under § 1-623.07(a); (2) has filed a valid claim in his or her lifetime; and (3) dies from a cause other than the injury before the end of the period specified by the schedule; the compensation specified by the schedule that is unpaid at his or her death, whether or not accrued or due at his or her death, shall be paid:

(A) Under an award made before or after the death;

(B) For the period specified by the schedule;

(C) To and for the benefit of the persons then in being within the classes and on the conditions and in proportions specified by this section; and

(D) In the following order of precedence:

(i) If there is no child, to the surviving spouse or domestic partner;

(ii) If there are both a surviving spouse or domestic partner and a child or children, one-half to the surviving spouse or domestic partner and one-half to the child or children;

(iii) If there is no surviving spouse or domestic partner, to the child or children;

(iv) If there is no survivor in the above classes, to the parent or parents completely or partially dependent for support on the decedent, or to other completely dependent relatives listed by § 1-623.33, or to both in proportions provided by rules and regulations; or

(v) If there is no survivor in the above classes and no burial allowance is payable under § 1-623.34, an amount not exceeding that which would be expendable under § 1-623.34, if applicable, shall be paid to reimburse a person equitably entitled thereto to the extent and in the proportion that he or she has paid the burial expenses: Except, that a compensated insurer or other person obligated by law or contract to pay the burial expenses or a state or political subdivision or entity is deemed not equitably entitled to such reimbursement.

(b)(1) Except as provided in paragraph (2) of this subsection, payments under subsection (a) of this subsection, except for an amount payable for a

period preceding the death of the employee, are at the basic rate of compensation for permanent disability specified by § 1-623.07.

(2) For an employee who would otherwise be an employee for purposes of this subchapter whose date of hire was before January 1, 1980, or whose claim for compensation for disability or death was pending before December 29, 1994, payments under subsection (a) of this section, except for an amount payable for a period preceding the death of the employee, are at the basic rate of compensation for permanent disability specified by § 1-623.07, even if at the time of death the employee was entitled to the augmented rate specified by § 1-623.10.

(c) A surviving beneficiary under subsection (a) of this section, except one under sub-subparagraph (v) of subparagraph (D) of paragraph (3) of subsection (a) of this section, does not have a vested right to payment and must be alive to receive payment.

(d) A beneficiary under subsection (a) of this section, except one under sub-subparagraph (v) of subparagraph (D) of paragraph (3) of subsection (a) of this section, ceases to be entitled to payment on the happening of an event which would terminate his or her right to compensation for death under § 1-623.33. When that entitlement ceases, compensation remaining unpaid under subsection (a) of this section is payable to the surviving beneficiary in accordance with subsection (a) of this section.

(Mar. 3, 1979, D.C. Law 2-139, § 2309, 25 DCR 5740; Sept. 26, 1995, D.C. Law 11-52, § 810(c), 42 DCR 3684; Apr. 12, 2000, D.C. Law 13-91, § 103(s), 47 DCR 520; Sept. 12, 2008, D.C. Law 17-231, § 3(g), 55 DCR 6758.)

Section references. — This section is referred to in §§ 1-623.01 and 1-623.15.

Prior Codifications. — 1981 Ed., § 1-624.9.

1973 Ed., § 1-353.9.

Effect of amendments. — D.C. Law 13-91, in sub-subpar. (a)(3)(D)(v), substituted “reimbursement” for “reimbursal”.

D.C. Law 17-231, in subsec. (a), substituted “surviving spouse or domestic partner” for “widow or widower”.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 10-253. — For legislative history of D.C. Law 10-253, see His-

torical and Statutory Notes following § 1-623.01.

Legislative history of Law 11-52. — Law 11-52, the “Omnibus Budget Support Act of 1995,” was introduced in Council and assigned Bill No. 11-218, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 19, 1995, and June 6, 1995, respectively. Signed by the Mayor on July 13, 1995, it was assigned Act No. 11-94 and transmitted to both Houses of Congress for its review. D.C. Law 11-52 became effective on September 26, 1995.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-602.03.

Legislative history of Law 17-231. — For Law 17-231, see notes following § 1-301.45.

§ 1-623.10. Augmented compensation for dependents.

(a) For the purpose of this section, “dependent” means the following:

(1) A spouse or domestic partner, if:

(A) He or she is a member of the same household as the employee;

(B) He or she is receiving regular contributions from the employee for his or her support; or

(C) The employee has been ordered by a court to contribute to his or her support;

(2) An unmarried child, while living with the employee or receiving regular contributions from the employee toward his or her support, and who is:

(A) Under 18 years of age; or

(B) Over 18 years of age and incapable of self-support because of physical or mental disability; and

(3) A parent, while wholly dependent on and supported by the employee.

Notwithstanding paragraph (2) of this subsection, compensation payable for a child that would otherwise end because the child has reached 18 years of age shall continue if he or she is a student as defined by § 1-623.01 at the time he or she reaches 18 years of age for so long as he or she continues to be such a student or until he or she marries or enters into a domestic partnership.

(a-1) Repealed.

(b) An employee with a disability, whose date of hire was before January 1, 1980, with 1 or more dependents is entitled to have his or her basic compensation for disability augmented:

(1) At the rate of $8\frac{1}{3}$ percent of his or her monthly pay if that compensation is payable under § 1-623.05 or § 1-623.07(a); or

(2) At the rate of $8\frac{1}{3}$ percent of the difference between his or her monthly pay and his or her monthly wage-earning capacity if that compensation is payable under § 1-623.06.

(b-1) Repealed.

(Mar. 3, 1979, D.C. Law 2-139, § 2310, 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(r), 27 DCR 2632; Sept. 26, 1995, D.C. Law 11-52, § 810(d), 42 DCR 3684; Apr. 9, 1997, D.C. Law 11-255, § 4(b), 44 DCR 1271; Apr. 24, 2007, D.C. Law 16-305, § 3(i), 53 DCR 6198; Sept. 12, 2008, D.C. Law 17-231, 3(h), 55 DCR 6758; Sept. 24, 2010, D.C. Law 18-223, § 1062(b)(9), 57 DCR 6242.)

Section references. — This section is referred to in §§ 1-623.01, 1-623.04, 1-623.09, and 1-623.12.

Prior Codifications. — 1981 Ed., § 1-624.10.

1973 Ed., § 1-353.10.

Effect of amendments. — D.C. Law 16-305 substituted “an employee with a disability” for “a disabled employee”, throughout the section.

D.C. Law 17-231, in subsec. (a), substituted “spouse or domestic partner” for “spouse”; and, in the last undesignated paragraph, substituted “marries or enters into a domestic partnership” for “marries”.

D.C. Law 18-223, in the lead-in text of subsec. (a), substituted “this section,” for “this section, and except as provided in subsection (a-1) of this section,”; repealed subsecs. (a-1) and (b-1); and, in subsec. (b), substituted “An employee with a disability, whose date of hire was before January 1, 1980,” for “Except as provided in subsection (b-1) of this section, an employee with a disability”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 1062(b)(9) of Fiscal Year 2011 Budget Sup-

port Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 3-81. — For legislative history of D.C. Law 3-81, see Historical and Statutory Notes following § 1-602.02.

Legislative history of Law 10-253. — For legislative history of D.C. Law 10-253, see Historical and Statutory Notes following § 1-623.01.

Legislative history of Law 11-52. — Law 11-52, the “Omnibus Budget Support Act of 1995,” was introduced in Council and assigned Bill No. 11-218, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 19, 1995, and June 6, 1995, respectively. Signed by the Mayor on July 13, 1995, it was assigned Act No. 11-94 and transmitted to both Houses of Congress for its review. D.C. Law 11-52 became effective on September 26, 1995.

Legislative history of Law 11-255. — For legislative history of D.C. Law 11-255, see His-

torical and Statutory Notes following § 1-603.01.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 1-307.02.

Legislative history of Law 17-231. — For Law 17-231, see notes following § 1-301.45.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 1-301.78.

§ 1-623.11. Additional compensation for services of attendants or vocational rehabilitation.

(a) The Mayor may pay an employee who has been awarded compensation an additional sum of not more than \$500 a month, as he or she considers necessary, when he or she finds that the service of an attendant is necessary constantly because the employee is totally blind or has lost the use of both hands or both feet or is paralyzed and unable to walk or because of another disability resulting from the injury making him or her so helpless as to require constant attendance.

(b) The Mayor may pay an individual undergoing vocational rehabilitation under § 1-623.04 additional compensation necessary for his or her maintenance, but not to exceed \$200 a month.

(Mar. 3, 1979, D.C. Law 2-139, § 2311, 25 DCR 5740.)

Section references. — This section is referred to in §§ 1-623.01 and 1-623.12.

Prior Codifications. — 1981 Ed., § 1-624.11.

1973 Ed., § 1-353.11.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

§ 1-623.12. Maximum and minimum monthly compensation.

(a) Except as provided by § 1-623.38, the monthly rate of compensation for disability, including augmented compensation under § 1-623.10, but not including additional compensation under § 1-623.11, may not be more than 75% of the monthly pay of the maximum rate of basic pay for GS-15 as provided in § 5332 of Title 5 of the United States Code or its equivalent as provided in subchapter XI of this chapter. In case of total disability and except as provided in subsection (b) of this section, the monthly rate of compensation may not be less than 75% of the monthly pay of the minimum rate of basic pay for GS-2 as provided in § 5332 of Title 5 of the United States Code or its equivalent as provided in subchapter XI of this chapter, or the amount of the monthly pay of the employee, whichever is less.

(b) For employees hired after December 31, 1979, who make a claim for compensation for disability or death after December 29, 1994, except as provided in § 1-623.38, the monthly rate of compensation for disability, including augmented compensation under § 1-623.10, but not including additional compensation under § 1-623.11, may not be more than 73% of the monthly pay of the maximum rate of basic pay for DS-12, Step 10. In the case of total disability the monthly rate of compensation may not be less than 75% of the monthly pay of the minimum rate of basic pay for DS-2, Step 1, or the amount of the monthly pay of the employee, whichever is less.

(Mar. 3, 1979, D.C. Law 2-139, § 2312, 25 DCR 5740; Sept. 26, 1995, D.C. Law 11-52, § 810(e), 42 DCR 3684.)

Section references. — This section is referred to in §§ 1-623.01 and 1-623.38.

Prior Codifications. — 1981 Ed., § 1-624.12.

1973 Ed., § 1-353.12.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 10-253. — For legislative history of D.C. Law 10-253, see Historical and Statutory Notes following § 1-623.01.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 1-623.10.

§ 1-623.13. Increase, decrease, or suspension of compensation.

(a) If an individual: (1) Was a minor or employed in a learner's capacity at the time of injury, and (2) did not have a physical or mental disability before the injury, the Mayor, on review under § 1-623.28 after the time the wage-earning capacity of the individual would probably have increased but for the injury, shall recompute prospectively the monetary compensation payable for disability on the basis of an assumed monthly pay corresponding to the probable increased wage-earning capacity.

(b) If an employee, without good cause fails to apply for and undergo vocational rehabilitation when so directed under § 1-623.04, the Mayor may review such failure under § 1-623.28. If the Mayor, upon review, finds that in the absence of such failure the wage-earning capacity of the individual would probably have substantially increased, the Mayor may reduce prospectively the monetary compensation of the individual in accordance with what would probably have been his or her wage-earning capacity in the absence of the failure, until such time as the individual in good faith complies with the direction of the Mayor.

(c) If an employee hired after December 31, 1979, without good cause, fails to apply for or undergo vocational rehabilitation when so directed under § 1-623.04, his or her right to compensation under this subchapter shall be suspended until the noncompliance ceases.

(Mar. 3, 1979, D.C. Law 2-139, § 2313, 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(s), 27 DCR 2632; Apr. 24, 2007, D.C. Law 16-305, § 3(j), 53 DCR 6198; Sept. 24, 2010, D.C. Law 18-223, § 1062(b)(10), 57 DCR 6242.)

Section references. — This section is referred to in § 1-623.01.

Prior Codifications. — 1981 Ed., § 1-624.13.

1973 Ed., § 1-353.13.

Effect of amendments. — D.C. Law 16-305, in subsec. (a), substituted "did not have a physical or mental disability" for "was not physically or mentally handicapped".

D.C. Law 18-223 rewrote the section heading which had read as follows: "Increase or decrease of basic compensation"; in subsec. (a), substituted "at the time of injury, and" for "at

the time of injury; or"; in subsec. (b), substituted "If an employee, whose date of hire was before January 1, 1980," for "If an individual"; and added subsec. (c).

Temporary Amendment of Section. — Section 2(c) of D.C. Law 19-69, in subsec. (b), substituted "If an individual" for "If an employee whose date of hire was before January 1, 1980,".

Section 4(b) of D.C. Law 19-69 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary

(90 day) amendment of section, see § 1062(b)(10) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

For temporary (90 day) amendment of section, see § 2(c) of Public Sector Workers' Compensation Return to Work Clarifying Emergency Amendment Act of 2011 (D.C. Act 19-158, October 11, 2011, 58 DCR 8881).

For temporary (90 day) amendment of section, see § 1032(b) of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) amendment of section, see § 1032(b) of Fiscal Year 2013 Budget

Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 3-81. — For legislative history of D.C. Law 3-81, see Historical and Statutory Notes following § 1-602.02.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 1-307.02.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 1-301.78.

§ 1-623.14. Computation of pay.

(a) For the purpose of this section:

(1) The term “overtime pay” means pay for hours of service in excess of a statutory or other basic workweek or other basic unit of work time, as observed by the employing establishment.

(2) The term “year” means a period of 12 calendar months, or the equivalent thereof as specified by rules and regulations prescribed by the Mayor.

(b) In computing monetary compensation for disability or death on the basis of monthly pay, that pay is determined under this section.

(c) The monthly pay at the time of injury is deemed one-twelfth of the average annual earnings of the employee at that time. When compensation is paid on a weekly basis, the weekly equivalent of the monthly pay is deemed one-fifty-second of the average annual earning. For so much of a period of total disability as does not exceed 90 calendar days from the date of the beginning of compensable disability, the compensation, at the discretion of the Mayor, may be computed on the basis of the actual daily wage of the employee at the time of injury, in which event he or she may receive compensation for the days he or she would have worked but for the injury.

(d) Average annual earnings are determined as follows:

(1) If the employee worked in the position in which he or she was employed at the time of his or her injury during substantially the whole year immediately preceding the injury and the employment was in a position for which an annual rate of pay:

(A) Was fixed, the average annual earnings are the annual rate of pay; or

(B) Was not fixed, the average annual earnings are the product obtained by multiplying his or her daily wage for the particular employment or the average thereof, if the daily wage has fluctuated; by 300, if he or she was employed on the basis of a 6 day workweek; 280, if employed on the basis of a 5½ day workweek; and 260, if employed on the basis of a 5 day workweek;

(2) If the employee did not work in the position in which he or she was employed at the time of his or her injury during substantially the whole year immediately preceding the injury, but the position was one which would have

afforded employment for substantially a whole year, the average annual earnings are a sum equal to the average annual earnings of an employee of the same class working substantially the whole immediately preceding year in the same or similar employment with the District government, as determined under paragraph (1) of this subsection;

(3) If either of the foregoing methods of determining the average annual earnings cannot be applied reasonably and fairly, the average annual earnings are a sum that reasonably represents the annual earning capacity of the injured employee in the employment in which he or she was working at the time of the injury having regard to the previous earnings of the employee in District of Columbia government employment, and of other employees of the District of Columbia government in the same or most similar class working in the same or most similar employment in the same or neighboring location, other previous employment of the employee or other relevant factors. The average annual earnings may not be less than 150 times the average daily wage the employee earned in the employment during the days employed within 1 year immediately preceding his or her injury; or

(4) If the employee served without pay or a nominal pay, paragraphs (1), (2), and (3) of this subsection apply, as far as practicable, but the average earnings of the employee may not exceed the minimum rate of basic pay for GS-15 as provided in § 5332 of Title 5 of the United States Code or its equivalent as provided in subchapter XI of this chapter; provided that the average earnings of the employee may not exceed the minimum rate of basic pay for DS-12, Step 10 or its equivalent in the collective bargaining unit for those employees hired after December 31, 1979, who make a claim for compensation for disability after December 29, 1994. If the average annual earnings cannot be determined reasonably and fairly in the manner otherwise provided by this section, the average annual earnings shall be determined at the reasonable value of the service performed but not in excess of \$3,600 a year.

(e) The value of subsistence and quarters, and of any other form of remuneration in kind for services if its value can be estimated in money and premium pay under § 5545(c)(1) of Title 5 of the United States Code, are included as part of the pay, but account is not taken of the following:

(1) Overtime pay;

(2) Additional pay or allowance authorized outside the District of Columbia government because of differential in cost of living or other special circumstances; or

(3) Bonus or premium pay for extraordinary service including bonus or pay for particularly hazardous service.

(Mar. 3, 1979, D.C. Law 2-139, § 2314, 25 DCR 5740; Sept. 26, 1995, D.C. Law 11-52, § 810(f), 42 DCR 3684.)

Section references. — This section is referred to in §§ 1-623.01, 1-623.15, and 1-623.33.

Prior Codifications. — 1981 Ed., § 1-624.14.
1973 Ed., § 1-353.14.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 10-253. — For legislative history of D.C. Law 10-253, see His-

torical and Statutory Notes following legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 1-623.10.

Legislative history of Law 11-52. — For 623.10.

§ 1-623.15. Determination of wage-earning capacity.

(a) In determining compensation for partial disability, except permanent partial disability compensable under §§ 1-623.07 and 1-623.09, the wage-earning capacity of an employee is determined by his or her actual earnings, if his or her actual earnings fairly and reasonably represent his or her wage-earning capacity. If the actual earnings of the employee do not fairly and reasonably represent his or her wage-earning capacity, or if the employee has no actual earnings, his or her wage-earning capacity as appears reasonable under the circumstances is determined with due regard to the following:

- (1) The nature of his or her injury;
- (2) The degree of physical impairment;
- (3) His or her usual employment;
- (4) His or her age;
- (5) His or her qualifications for other employment;
- (6) The availability of suitable employment; and
- (7) Other factors or circumstances which may affect his or her wage-earning capacity as a worker with a disability.

(b) Section 1-623.14 is applicable in determining the wage-earning capacity of an employee after the beginning of partial disability.

(Mar. 3, 1979, D.C. Law 2-139, § 2315, 25 DCR 5740; Apr. 24, 2007, D.C. Law 16-305, § 3(k), 53 DCR 6198.)

Section references. — This section is referred to in § 1-623.01.

Prior Codifications. — 1981 Ed., § 1-624.15.

1973 Ed., § 1-353.15.

Effect of amendments. — D.C. Law 16-305, in subsec. (a)(7), substituted “as a worker with a disability” for “in his or her disabled condition”.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 1-307.02.

§ 1-623.16. Limitation of right to receive compensation.

(a) While an employee is receiving compensation under this subchapter or if he or she has been paid a lump sum in commutation of installment payments until the expiration of the period during which the installment payments would have continued, he or she may not receive salary, pay, or remuneration of any type from the District of Columbia, except:

- (1) In return for service actually performed;
- (2) Pension for service in the Army, Navy, or Air Force;
- (3) Other benefits administered by the Veterans Administration unless such benefits are payable for the same injury or the same death; and
- (4) Retired pay, retirement pay, retainer pay, or equivalent pay for service in the armed forces or other uniformed services, subject to the reduction of such pay in accordance with § 5532 of Title 5 of the United States Code.

Eligibility for or receipt of benefits under subchapter III of Chapter 83 of Title 5 of the United States Code or another retirement or disability system for employees of the government does not impair the right of the employee to compensation for scheduled disabilities specified by subsection (c) of § 1-623.07.

(a-1) An employee shall not be eligible for compensation under this subchapter if he or she was employed by the District of Columbia or the federal government before October 1, 1987, and is receiving disability benefits from the federal government for the same injury.

(b) An individual entitled to benefits under this subchapter because of his or her injury, or because of the death of an employee who also is entitled to receive from the District of Columbia government under a provision of a statute, other than this subchapter, payment or benefits for that injury or death (except proceeds of an insurance policy), because of service by him or her (or in the case of death, by the deceased) as an employee or in the armed forces, shall elect which benefits he or she will receive. The individual shall make the election within 1 year after the injury or death or within a further time allowed for good cause by the Mayor. The election when made is irrevocable, except as otherwise provided by statute.

(c) The liability of the District of Columbia government or an instrumentality thereof, under this subchapter or any extension thereof with respect to the injury or death of an employee, is exclusive and instead of all other liability of the District of Columbia government or the instrumentality to the employee, his or her legal representative, spouse, dependents, next of kin, and any other person otherwise entitled to recover damages from the District of Columbia or the instrumentality because of the injury or death in a direct judicial proceeding, in a civil action, or in admiralty, or by an administrative or judicial proceeding under a workmen's compensation statute or under a federal tort liability statute. This subchapter does not apply to a master or a member of a crew of a vessel.

(d)(1) If an employee who has been receiving compensation under this title is paid a lump sum in commutation of installment payments until the expiration of the period during which the installment payments would have continued, becomes a retiree under the federal government civil service retirement system, that employee may not receive any further payments under this subchapter.

(2) The Mayor shall promulgate rules to implement the provisions of paragraph (1) of this subsection.

(Mar. 3, 1979, D.C. Law 2-139, § 2316, 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(t), (u), 27 DCR 2632; Oct. 20, 1999, D.C. Law 13-38, § 602, 46 DCR 6373; Sept. 24, 2010, D.C. Law 18-223, § 1062(b)(11), 57 DCR 6242.)

Cross references. — Health and Hospitals Public Benefit Corporation, easy out and early out retirement incentive programs, disability recipients, see § 44-1103.01.

Section references. — This section is referred to in § 1-623.01.

Prior Codifications. — 1981 Ed., § 1-624.16.

1973 Ed., § 1-353.16.

Effect of amendments. — D.C. Law 13-38 added subsec. (d).

D.C. Law 18-223 added subsec. (a-1).

Emergency legislation. — For temporary (90-day) amendment of section, see § 602 of the Service Improvement and Fiscal Year 2000 Budget Support Emergency Act of 1999 (D.C. Act 13-110, July 28, 1999, 46 DCR 6320).

For temporary (90 day) amendment of section, see § 1062(b)(11) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 3-81. — For legislative history of D.C. Law 3-81, see Historical and Statutory Notes following § 1-602.02.

Legislative history of Law 10-253. — For legislative history of D.C. Law 10-253, see Historical and Statutory Notes following § 1-623.01.

Legislative history of Law 13-38. — For Law 13-38, see notes following § 1-603.01.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 1-301.78.

§ 1-623.17. Time of accrual of right.

(a) An employee is not entitled to compensation or continuation of pay as provided in § 1-623.18 for the first 3 days of temporary disability which would have otherwise been workdays for the employee, except:

- (1) When the disability exceeds 14 calendar days;
- (2) When the disability is followed by permanent disability; or
- (3) As provided by §§ 1-623.03 and 1-623.04.

(b) An employee may use annual or sick leave to his or her credit at the time the disability begins but the time period specified in subsection (a) of this section does not begin to run until the use of annual or sick leave ends.

(Mar. 3, 1979, D.C. Law 2-139, § 2317, 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(v), 27 DCR 2632.)

Section references. — This section is referred to in § 1-623.01.

Prior Codifications. — 1981 Ed., § 1-624.17.

1973 Ed., § 1-353.17.

Legislative history of Law 2-139. — For

legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 3-81. — For legislative history of D.C. Law 3-81, see Historical and Statutory Notes following § 1-602.02.

§ 1-623.18. Continuation of pay; election to use annual or sick leave.

(a) The District of Columbia government shall authorize the continuation of pay of an employee, as defined in paragraph (1) of § 1-623.01, who has filed a claim for a period of wage loss due to a traumatic injury with his or her immediate superior on a form approved by the Mayor within the time specified in paragraph (2) of subsection (a) of § 1-623.22.

(b) Continuation of pay under this subchapter shall be furnished:

- (1) Unless controverted under rules and regulations of the Mayor;
- (2) For a period not to exceed 45 days for employees hired before January 1, 1980, or for employees who have a claim for compensation for disability pending on December 29, 1994, provided that the period of continuation of pay shall not exceed 21 days for all other employees, beginning 2 years after December 29, 1994; and
- (3) Under accounting procedures and such other rules and regulations as the Mayor may require.

(c) If a claim under subsection (a) of this section is denied by the Mayor, payments under this section, at the option of the employee, shall be charged to sick or annual leave or shall be deemed overpayments of pay within the meaning of § 5584 of Title 5 of the United States Code or equivalent provisions of this chapter.

(d) Payments under this section shall not be considered compensation as defined by paragraph (12) of § 1-623.01.

(Mar. 3, 1979, D.C. Law 2-139, § 2318, 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(w), 27 DCR 2632; Sept. 26, 1995, D.C. Law 11-52, § 810(g), 42 DCR 3684.)

Section references. — This section is referred to in §§ 1-623.01 and 1-623.17.

Prior Codifications. — 1981 Ed., § 1-624.18.

1973 Ed., § 1-353.18.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 3-81. — For

legislative history of D.C. Law 3-81, see Historical and Statutory Notes following § 1-602.02.

Legislative history of Law 10-253. — For legislative history of D.C. Law 10-253, see Historical and Statutory Notes following § 1-623.01.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 1-623.10.

§ 1-623.19. Notice of injury or death.

(a) An employee injured in the performance of his or her duty, or someone on his or her behalf, shall give notice thereof. Notice of a death believed to be related to the employment shall be given by an eligible beneficiary specified in § 1-623.33, or someone on his or her behalf. A notice of injury or death shall:

- (1) Be given within 30 days after the injury or death;
- (2) Be given to the immediate superior of the employee by personal delivery or by depositing it in the mail properly stamped and addressed;
- (3) Be in writing;
- (4) State the name and address of the employee;
- (5) State the year, month, day, hour when, and the particular locality where the injury or death occurred;
- (6) State the cause and nature of the injury, or in the case of death, the employment factors believed to be the cause;
- (7) Be signed by and contain the address of the individual giving the notice; and

(8) Be accompanied by a form approved by the Mayor authorizing access to all related medical and earnings data concerning the claimant.

(b) Failure to give the notice shall not bar any claim under this chapter:

(1) If the employer or the Disability Compensation Fund had actual knowledge of the injury or death and its relationship to the employment and the employer has not been prejudiced by failure to give the notice;

(2) If the Mayor or his or her designee excuses the failure on the ground that for some satisfactory reason the notice could not be given; or

(3) Unless objection to the failure is not raised before the Mayor at the first hearing of a claim for compensation relating to the injury or death at the Department of Employment Services.

(c) The time limitations in this section shall not apply to:

(1) A minor until he or she reaches 21 years of age or has had a legal representative appointed; or

(2) An incompetent individual while he or she is incompetent and has no duly appointed legal representative.

(Mar. 3, 1979, D.C. Law 2-139, § 2319, 25 DCR 5740; Apr. 5, 2005, D.C. Law 15-290, § 2(b), 52 DCR 1449; Mar. 8, 2007, D.C. Law 16-231, § 2(a), 54 DCR 365; Mar. 14, 2007, D.C. Law 16-294, § 2(a), 54 DCR 1086.)

Section references. — This section is referred to in §§ 1-623.01 and 1-623.22.

Prior Codifications. — 1981 Ed., § 1-624.19.

1973 Ed., § 1-353.19.

Effect of amendments. — D.C. Law 15-290 added subsecs. (b) and (c).

D.C. Law 16-231, in subsec. (b)(3), substituted “is not raised” for “is raised”.

D.C. Law 16-294, in subsec. (b), deleted “if” from the end of the lead-in text, inserted “If” at the beginning of pars. (1) and (2), and inserted “Unless” at the beginning of par. (3).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 15-290. — For Law 15-290, see notes following § 1-623.03.

Legislative history of Law 16-231. — Law 16-231, the “District Government Injured Em-

ployee Protection Act of 2006”, was introduced in Council and assigned Bill No. 16-238, which was referred to Committee on Government Operations. The Bill was adopted on first and second readings on November 14, 2006, and December 5, 2006, respectively. Signed by the Mayor on December 28 2006, it was assigned Act No. 16-587 and transmitted to both Houses of Congress for its review. D.C. Law 16-231 became effective on March 8, 2007.

Legislative history of Law 16-294. — Law 16-294, the “Second Technical Amendments Act of 2006”, was introduced in Council and assigned Bill No. 16-996, which was referred to Committee on the Whole. The Bill was adopted on first and second readings on November 14, 2006, and December 5, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-653 and transmitted to both Houses of Congress for its review. D.C. Law 16-294 became effective on March 14, 2007.

§ 1-623.20. Report of injury.

(a) The immediate superior of an employee shall report to the Mayor an injury to the employee that results in his or her death or probable injury within 3 days from the date of the injury or death or the date that the superior has knowledge of the injury, whichever is earlier.

(b) Notwithstanding § 1-623.24(a)(1), failure of a superior to report an injury or death shall not impair a claimant’s right to compensation. The Mayor may:

(1) Prescribe the information that the report shall contain;

(2) Require the immediate superior to make supplemental reports; and

(3) Obtain such additional reports and information from employees as are agreed on by the Mayor and the head of the employing agency.

(Mar. 3, 1979, D.C. Law 2-139, § 2320, 25 DCR 5740; Apr. 5, 2005, D.C. Law 15-290, § 2(c), 52 DCR 1449.)

Section references. — This section is referred to in § 1-623.01.

Prior Codifications. — 1981 Ed., § 1-624.20.

1973 Ed., § 1-353.20.

Effect of amendments. — D.C. Law 15-290 rewrote the section which had read:

“Immediately after an injury to an employee

which results in his or her death or probable disability, his or her immediate superior shall report to the Mayor. The Mayor may:

"(1) Prescribe the information that the report shall contain;

"(2) Require the immediate superior to make supplemental reports; and

"(3) Obtain such additional reports and infor-

mation from employees as are agreed on by the Mayor and the head of the employing agency."

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 15-290. — For Law 15-290, see notes following § 1-623.03.

§ 1-623.21. Claim required; contents.

(a) Compensation under this subchapter may be allowed only if an individual or someone on his or her behalf makes claim therefor. The claim shall:

(1) Be made in writing within the time specified by § 1-623.22;

(2) Be delivered to the Office of the Mayor or to an individual whom the Mayor may designate by rules and regulations, or deposited in the mail properly stamped and addressed to the Mayor or his or her designee;

(3) Be on a form approved by the Mayor;

(4) Contain all information required by the Mayor;

(5) Be sworn to by the individual entitled to compensation or someone on his or her behalf; and

(6) Except in case of death, be accompanied by a certificate of the physician of the employee stating the nature of the injury and the nature and probable extent of the disability.

(b) The Mayor may waive paragraphs (3) through (6) of subsection (a) of this section for reasonable cause shown.

(Mar. 3, 1979, D.C. Law 2-139, § 2321, 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(x), 27 DCR 2632.)

Section references. — This section is referred to in § 1-623.01.

Prior Codifications. — 1981 Ed., § 1-624.21.

1973 Ed., § 1-353.21.

Legislative history of Law 2-139. — For

legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 3-81. — For legislative history of D.C. Law 3-81, see Historical and Statutory Notes following § 1-602.02.

§ 1-623.22. Time for making claim.

(a) An original claim for compensation for disability or death must be filed within 2 years after the injury or death. Compensation for disability or death, including medical care in a disability case, may not be allowed if claim is not filed within that time unless:

(1) The immediate superior has actual knowledge of the injury or death within 30 days. The knowledge must be such to put the immediate superior reasonably on notice of an on-the-job injury or death; or

(2) Written notice of injury or death as specified in § 1-623.19 was given within 30 days.

(b) In a case of latent disability, the time for filing a claim does not begin to run until the employee has a compensable disability and is aware, or by the exercise of reasonable diligence should have been aware, of the causal relationship of the compensable disability to his or her employment. In such a

case, the time for giving notice of injury begins to run when the employee is aware or, by the exercise of reasonable diligence, should have been aware that his or her condition is causally related to his or her employment, whether or not there is a compensable disability.

(c) The timely filing of a disability claim because of injury will satisfy the time requirements for a death claim based on the same injury.

(d) The time limitations in subsections (a) and (b) of this section do not:

(1) Begin to run against a minor until he or she reaches 21 years of age or has had a legal representative appointed; or

(2) Run against an incompetent individual while he or she is incompetent and has no duly appointed legal representative; or

(3) Run against any individual whose failure to comply is excused by the Mayor on the ground that such notice could not be given because of exceptional circumstances.

(e) An injured worker may reopen a case within one year after the date of the last payment of indemnity or the final order issued by a judicial entity.

(Mar. 3, 1979, D.C. Law 2-139, § 2322, 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(y), 27 DCR 2632; Sept. 24, 2010, D.C. Law 18-223, § 1062(b)(12), 57 DCR 6242.)

Section references. — This section is referred to in §§ 1-623.01, 1-623.18, and 1-623.21.

Prior Codifications. — 1981 Ed., § 1-624.22.

1973 Ed., § 1-353.22.

Effect of amendments. — D.C. Law 18-223, in subsec. (a), substituted “2 years” for “3 years”; and added subsec. (e).

Emergency legislation. — For temporary (90 day) amendment of section, see § 1062(b)(12) of Fiscal Year 2011 Budget Sup-

port Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 3-81. — For legislative history of D.C. Law 3-81, see Historical and Statutory Notes following § 1-602.02.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 1-301.78.

§ 1-623.23. Physical examinations.

(a) An employee shall submit to examination by a medical officer of the District of Columbia government, or by a physician designated or approved by the Mayor, after the injury and as frequently and at the times and places as may be reasonably required. The employee may have a physician designated and paid by him or her present to participate in the examination.

(a-1) Each person who provides medical care or service under this subchapter shall utilize a standard coding system for reports and bills pursuant to regulations prescribed by the Mayor.

(a-2) Any medical care or service furnished or scheduled to be furnished under this subchapter shall be subject to utilization review. Utilization review may be accomplished prospectively, concurrently, or retrospectively. A decision on the medical care or service to the employee shall be made by the utilization review organization or individual within 60 days after the utilization review is requested. If the utilization review is not completed within 120 days of the request, the care or service under review shall be deemed approved. If the Mayor denies medical care or service because the medical care provider or

claimant has not provided enough information for the utilization review process, the provider or claimant may request approval for the medical care or service again by providing new information.

(1) In order to determine the necessity, character, or sufficiency of any medical care or service furnished or scheduled to be furnished under this subchapter and to allow for the performance of competent utilization review, a utilization review organization or individual used pursuant to this chapter shall be certified by the Utilization Review Accreditation Commission.

(2) When it appears that the necessity, character, or sufficiency of medical care or service to an employee is improper or that medical care or service scheduled to be furnished must be clarified, the Mayor, employee, or District of Columbia government may initiate review by a utilization review organization or individual.

(3) If the medical care provider or employee disagrees with the opinion of the utilization review organization or individual, the medical care provider, or employee shall have the right to request reconsideration of the opinion by the utilization review organization or individual 60 calendar days from receipt of the utilization review report. The request for reconsideration shall be written and contain reasonable medical justification for the reconsideration.

(4) Disputes between a medical care provider, employee, or District of Columbia government on the issue of necessity, character, or sufficiency of the medical care or service furnished, or scheduled to be furnished, or the fees charged by the medical care provider shall be resolved by the Mayor upon application for a hearing by the District of Columbia government, employee, or medical provider. The decision of the Mayor may be reviewed by the Superior Court of the District of Columbia. The decision may be affirmed, modified, revised, or remanded in the discretion of the court. The decision shall be affirmed if supported by substantial competent evidence on the record.

(5) The District of Columbia government shall pay the cost of a utilization review if the employee seeks the review and is the prevailing party.

(a-3) Medical care providers shall not hold employees liable for services rendered in connection with a compensable injury under this subchapter.

(b) An employee is entitled to be paid expenses incident to an examination required by the Mayor which, in the opinion of the Mayor, are necessary and reasonable, including transportation and loss of wages incurred in order to be examined. The expenses, when authorized or approved by the Mayor, are paid from the Employees' Compensation Fund.

(c) The Mayor shall fix the fees for examinations under this section by physicians not employed by or under contract to the District of Columbia government to furnish medical services to employees. The fees, when authorized or approved by the Mayor, are paid from the Employees' Compensation Fund.

(d) If an employee refuses to submit to or obstructs an examination, his or her right to compensation under this subchapter is suspended until the refusal or obstruction stops. Compensation is not payable while a refusal or obstruction continues, and the period of the refusal or obstruction is deducted from the period for which compensation is payable to the employee.

(Mar. 3, 1979, D.C. Law 2-139, § 2323, 25 DCR 5740; Mar. 6, 1991, D.C. Law 8-198, § 3(d), 37 DCR 6890; Apr. 5, 2005, D.C. Law 15-290, § 2(d), 52 DCR 1449; Sept. 24, 2010, D.C. Law 18-223, § 1062(b)(13), 57 DCR 6242.)

Section references. — This section is referred to in §§ 1-623.01 and 1-623.03.

Prior Codifications. — 1981 Ed., § 1-624.23.

1973 Ed., § 1-353.23.

Effect of amendments. — D.C. Law 15-290, in subsec. (a-2), inserted “A decision on the medical care or service to the employee shall be made by the utilization review organization or individual within 60 days after the utilization review is requested. If the utilization review is not completed within 120 days of the request, the care or service under review shall be deemed approved. If the Mayor denies medical care or service because the medical care provider or claimant has not provided enough information for the utilization review process, the provider or claimant may request approval for the medical care or service again by providing new information.” at the end of the second lead-in sentence, inserted “or employee” following “If the medical care provider” and inserted “, or employee” following “individual, the medical care provider” in par. (3), and inserted “In all medical opinions used under this section, the diagnosis or medical opinion of the employee’s treating physician shall be accorded great

weight over other opinions, absent compelling reasons to the contrary.” in par. (4).

D.C. Law 18-223, in subsec. (a-2)(4), deleted “In all medical opinions used under this section, the diagnosis or medical opinion of the employee’s treating physician shall be accorded great weight over other opinions, absent compelling reasons to the contrary.”

Emergency legislation. — For temporary (90 day) amendment of section, see § 1062(b)(13) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 8-198. — For legislative history of D.C. Law 8-198, see Historical and Statutory Notes following § 1-623.01.

Legislative history of Law 15-290. — For Law 15-290, see notes following § 1-623.03.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 1-301.78.

Editor’s notes. — Mayor authorized to issue rules: See Historical and Statutory Notes following § 1-623.01.

CASE NOTES

ANALYSIS

Administrative procedure.
Due process.

Administrative procedure.

Reinstatement remedy ordered by court to rectify District of Columbia’s unconstitutional, unpublished system of inadequate notice and procedure regarding disability benefit termination, suspension, and modification was proper notwithstanding government’s argument that reinstatement should follow, rather than precede, individualized termination, suspension, or modification process under newly promulgated rules ordered by court because only remedy available to due process violation was nominal damages; reinstatement order was equitable and prospective in nature and not compensatory damages remedy, to extent remedy could possibly be construed as retrospective it was in accordance with well-established precedent, and reinstatement remedies were commonplace under District of Columbia Administrative Procedure Act (DCAPA) and in cases involving multiple plaintiffs or class actions. *Lightfoot v. District of Columbia*, 355 F.Supp.2d 414, 2005 U.S. Dist. LEXIS 1195 (2005).

Upon court’s finding that District of Columbia’s unpublished policies regarding disability benefit termination, suspension or modification process were void for failure to comply with District of Columbia Administrative Procedure Act (DCAPA), remedy available for aggrieved parties was not limited to remand to the agency for rule-making; rather, court would order that the disability compensation benefits of all members of beneficiary class be reinstated until individualized termination, modification, or suspension determinations could be made under validly promulgated rules. *Lightfoot v. District of Columbia*, 339 F.Supp.2d 78, 2004 U.S. Dist. LEXIS 21140 (2004), reversed by, remanded by 448 F.3d 392, 371 U.S. App. D.C. 96, 2006 U.S. App. LEXIS 12597 (2006).

Due process.

For purposes of District of Columbia’s motion for court reconsideration, based on need to correct clear error or manifest injustice, of its decision that failure to adopt written and consistently applied standards, policies and procedures governing termination, suspension and modification of disability compensation benefits violated due process, court’s legal findings re-

lating to notice and due process did not exceed constitutional requirements notwithstanding government's arguments that it was impracticable, if not impossible, for disability compensation program to reduce discretionary aspects of eligibility decisionmaking to writing and that due process did not require program to reduce to writing process involving use of professional judgment and expertise. *Lightfoot v. District of Columbia*, 355 F.Supp.2d 414, 2005 U.S. Dist. LEXIS 1195 (2005).

Absence of clear, published standards governing District of Columbia's disability compensation program failed to satisfy due process; while development of Termination of Benefits (TOB) notice system was improvement, reliance on reforms instituted through notice system was misplaced given inherent limitations of notice itself, major problems existed with government's argument that present writings "defining" framework for termination, suspension or modification of disability benefits were both adequate and sufficiently available, and program's current procedures and framework for initial termination decisions, reconsideration decisions, and decisions on appeal were not

in writing and did not provide sufficient notice to claimants. *Lightfoot v. District of Columbia*, 355 F.Supp.2d 414, 2005 U.S. Dist. LEXIS 1195 (2005).

District of Columbia's failure to adopt written and consistently applied standards, policies and procedures governing the termination, suspension and modification of disability compensation benefits violated the Due Process Clause of the Fifth Amendment; the system of terminating the disability benefits enjoyed by beneficiaries and other public employees gave no hint as to possible opportunities for beneficiaries to provide claims adjusters with information prior to the decision, nor did it provide any explicit clues as to the evaluation protocols and data weighting employed in the termination decision process, nor did it furnish any glimmer of insight into the standards of review for such decisions or the post-termination procedural rights of the beneficiaries. *Lightfoot v. District of Columbia*, 339 F.Supp.2d 78, 2004 U.S. Dist. LEXIS 21140 (2004), reversed by, remanded by 448 F.3d 392, 371 U.S. App. D.C. 96, 2006 U.S. App. LEXIS 12597 (2006).

§ 1-623.24. Time for making claim; finding of facts; award; right to hearing; conduct of hearing.

(a) The Mayor or his or her designee shall determine and make a finding of facts and an award for or against payment of compensation under this subtitle within 30 days after the claim was filed based on the following guidelines:

(1) The claim presented by the beneficiary and the report furnished by the employee's immediate superior; and

(2) Any investigation as the Mayor or his or her designee considers necessary, provided that the investigation shall not extend beyond 30 days from the date that the Mayor received the report of the injury.

(a-1) Failure of an employee's immediate superior to report an injury shall not prejudice a claimant's right to benefits, nor relieve the Mayor or his or her designee of the duty to make a finding of facts and an award for or against payment of compensation within 30 days after the date the claim was filed.

(a-2) Failure of the Mayor or his or her designee to complete an investigation under subsection (a) of this section shall not prejudice a claimant's right to benefits.

(a-3)(1) If the Mayor or his or her designee fails to make a finding of facts and an award for or against payment of compensation on a newly filed claim within 30 calendar days, the claim shall be deemed accepted, and the Mayor or his or her designee shall commence payment of compensation on the 31st day following the date the claim was filed. This section shall not apply if the Mayor provides notice in writing that extenuating circumstances preclude the Mayor from making a decision within this period, which shall include supporting documentation stating the reasons why a finding of facts and an award for or against compensation cannot be made within this period.

(2) If after the commencement of payment, the Mayor makes a determination against payment of compensation, payment shall cease; provided, that the Mayor or his or her designee may recoup benefits under § 1-623.29. The claimant shall not be required to repay monies received until all administrative remedies to the Department of Employment Service have been exhausted under subsection (b) of this section and under § 1-623.28.

(a-4) Repealed.

(b)(1) Before review under § 1-623.28(a), a claimant for compensation not satisfied with a decision of the Mayor or his or her designee under subsection (a) of this section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on the claim before a Department of Employment Services Disability Compensation Administrative Law Judge. At the hearing, the claimant and the Corporation Counsel are entitled to present evidence. Within 30 days after the hearing, the Mayor or his or her designee shall notify the claimant, the Corporation Counsel, and the Office of Personnel in writing of his or her decision and any modifications of the award he or she may make and the basis of the decision.

(2) In conducting the hearing, the representative of the Mayor is not bound by common law or statutory rules of evidence, or by technical or formal rules of procedure, or by the provisions of the District of Columbia Administrative Procedure Act (D.C. Code, § 2-501 et seq.), except as provided by this subchapter, but may conduct the hearing in such manner as to best ascertain the rights of the claimant. For this purpose, he or she shall receive such relevant evidence as the claimant adduces and such other evidence as he or she determines necessary or useful in evaluating the claim.

(3) The Mayor or his or her designee shall begin payment of compensation to the claimant within 30 days after the date of an order from the Department of Employment Services Administrative Law Judge.

(c) Repealed.

(d)(1) The Mayor may modify an award of compensation if the Mayor or his or her designee has reason to believe a change of condition has occurred. The modification shall be made in accordance with the standards and procedures as follows:

(A) The Mayor shall provide written notice to the claimant of the proposed modification with the supportive documentation relied upon for the modification;

(B) The claimant shall have at least 30 days to provide the Mayor with written information as to why the proposed modification is not justified; and

(C) The Mayor shall conduct a full review of the reasons for the proposed modification and the arguments and information provided by the claimant.

(2) If the Mayor determines that modification of the award is required, the Mayor shall provide written notice to the claimant of the modification, including the reasons for the modification and the claimant's right to seek review of that decision under subsection (b) of this section.

(3) The Mayor may not modify benefits until requirements under this subsection have been completed, or until any deadline established by the

Mayor for the submission of additional information has expired, whichever is later, except that the following modifications may be made contemporaneously with the provision of a notice under this subsection:

(A) The award of compensation was for a specific period of time which has expired;

(B) The death of the claimant;

(C) The claimant has been released to return to work or has returned to work based upon clear evidence;

(D) The claimant has been convicted of fraud in connection with the claim; or

(E) Payment of compensation has been suspended due to the claimant's failure to participate in vocational rehabilitation, failure to follow prescribed and recommended courses of medical treatment from the treating physician, or failure to cooperate with the Mayor's request for a physical examination.

(4) An award for compensation may not be modified because of a change to the claimant's condition unless:

(A) The disability for which compensation was paid has ceased or lessened;

(B) The disabling condition is no longer causally related to the employment;

(C) The claimant's condition has changed from a total disability to a partial disability;

(D) The employee has been released to return to work in a modified or light duty basis; or

(E) The Mayor or his or her designee determines based upon strong compelling evidence that the initial decision was in error.

(e) The Mayor shall provide a claimant and his or her attorney with access to the claimant's file within 5 business days after a request to review the file is made. The claimant shall be provided, upon request, with one set of copies of the documents in the file.

(f) A claimant who is not satisfied with a decision under subsection (d) of this section may, within 30 days after the issuance of a decision, request a hearing on the claim before a Department of Employment Services Disability Compensation Administrative Law Judge under subsection (b) of this section.

(g) If the Mayor or his or her designee fails to make payments of the award for compensation as required by subsection (a-3)(1), (a-4)(2), or (b)(3) of this section, the award shall be increased by an amount equal to one month of the compensation for each 30-day period that payment is not made; provided, that the increase shall not exceed 12 months' compensation. In addition, the claimant may file with the Superior Court of the District of Columbia a lien against the Disability Compensation Fund, the General Fund of the District of Columbia, or any other District fund or property to pay the compensation award. The Court shall fix the terms and manner of enforcement of the lien against the compensation award.

(Mar. 3, 1979, D.C. Law 2-139, § 2324, 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(z), 27 DCR 2632; Mar. 6, 1991, D.C. Law 8-198, § 3(e), 37 DCR 6890;

Nov. 19, 1997, 111 Stat. 2181, Pub. L. 105-100, § 150(c)(3); Mar. 26, 1999, D.C. Law 12-175, § 2102(c), 45 DCR 7193; Oct. 3, 2001, D.C. Law 14-28, § 1203(e), 48 DCR 6981; Apr. 5, 2005, D.C. Law 15-290, § 2(e), 52 DCR 1449; Mar. 8, 2007, D.C. Law 16-231, § 2(b), 54 DCR 365; Sept. 24, 2010, D.C. Law 18-223, § 1062(b)(14), 57 DCR 6242.)

Section references. — This section is referred to in §§ 1-623.01, 1-623.20, 1-623.28, 1-623.35, and 1-623.42.

Prior Codifications. — 1981 Ed., § 1-624.24.

1973 Ed., § 1-353.24.

Effect of amendments. — D.C. Law 14-28, in subsec. (b)(1), substituted “before a Department of Employment Services Disability Compensation Administrative Law Judge” for “before a representative of the Mayor” in the first sentence and substituted “Office of Personnel” for “Benefits Administration Office of the Department of Employment Services” in the last sentence; and, in subsec. (d), in the third sentence, substituted “Director of the Department of Employment Services” for “Mayor or his or her designee”, and substituted “Office of Personnel” for “Benefits Administration Office of the Department of Employment Services”.

D.C. Law 15-290 rewrote subsecs. (a) and (d); and added subsecs. (a-1) to (a-4), par. (3) of subsec. (b), and subsecs. (e) and (f).

D.C. Law 16-231 added subsec. (g).

D.C. Law 18-223, in subsec. (a-3)(1), substituted “against payment of compensation on a newly filed claim” for “against payment of compensation”; repealed subsec. (a-4); rewrote subsecs. (d)(3)(C), (E), and (4)(D).

Emergency legislation. — For temporary amendment of section, see § 1702(c) of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), and § 1702(c) of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

For temporary (90-day) amendment of section, see § 1702(c) of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1999 (D.C. Act 13-41, March 31, 1999, 46 DCR 3446).

For temporary (90 day) amendment of section, see § 1103(e) of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

For temporary (90 day) amendment of section, see § 1062(b)(14) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 3-81. — For legislative history of D.C. Law 3-81, see Historical and Statutory Notes following § 1-602.2.

Legislative history of Law 8-198. — For legislative history of D.C. Law 8-198, see Historical and Statutory Notes following § 1-623.01.

Legislative history of Law 12-175. — For legislative history of D.C. Law 12-175, see Historical and Statutory Notes following § 1-603.01.

Legislative history of Law 14-28. — For Law 14-28, see notes following § 1-604.06.

Legislative history of Law 15-290. — For Law 15-290, see notes following § 1-623.03.

Legislative history of Law 16-231. — For Law 16-231, see notes following § 1-623.19.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 1-301.78.

Editor's notes. — Mayor authorized to issue rules: See Historical and Statutory Notes following § 1-623.01.

Application of § 150(c) of Pub. L. 105-100: Section 150(c)(5) of Pub. L. 105-100, 111 Stat. 2181, the District of Columbia Appropriations Act, 1998, provided that the amendments made by subsection (c) shall apply with respect to services, supplies, or appliances furnished under title XXIII of the District of Columbia Merit Personnel Act of 1978 on or after the date of the enactment of this Act. Public Law 105-100 was approved November 19, 1997.

CASE NOTES

ANALYSIS

Administrative procedure.
Disability benefits.
Due process.
Modification of award.
Pleadings.

Administrative procedure.

To the extent that District of Columbia employees' claims against District and labor unions substantively challenged their alleged terminations or the denial of their workers' compensation claims, such claims could only be asserted via mechanisms provided by District

of Columbia Comprehensive Merit Protection Act (CMPA) before Public Employee Relations Board (PERB), and not in an action before district court. *McManus v. District of Columbia*, 530 F.Supp.2d 46, 2007 U.S. Dist. LEXIS 94797 (2007).

Reinstatement remedy ordered by court to rectify District of Columbia's unconstitutional, unpublished system of inadequate notice and procedure regarding disability benefit termination, suspension, and modification was proper notwithstanding government's argument that reinstatement should follow, rather than precede, individualized termination, suspension, or modification process under newly promulgated rules ordered by court because only remedy available to due process violation was nominal damages; reinstatement order was equitable and prospective in nature and not compensatory damages remedy, to extent remedy could possibly be construed as retrospective it was in accordance with well-established precedent, and reinstatement remedies were commonplace under District of Columbia Administrative Procedure Act (DCAPA) and in cases involving multiple plaintiffs or class actions. *Lightfoot v. District of Columbia*, 355 F.Supp.2d 414, 2005 U.S. Dist. LEXIS 1195 (2005).

Upon court's finding that District of Columbia's unpublished policies regarding disability benefit termination, suspension or modification process were void for failure to comply with District of Columbia Administrative Procedure Act (DCAPA), remedy available for aggrieved parties was not limited to remand to the agency for rule-making; rather, court would order that the disability compensation benefits of all members of beneficiary class be reinstated until individualized termination, modification, or suspension determinations could be made under validly promulgated rules. *Lightfoot v. District of Columbia*, 339 F.Supp.2d 78, 2004 U.S. Dist. LEXIS 21140 (2004), reversed by, remanded by 448 F.3d 392, 371 U.S. App. D.C. 96, 2006 U.S. App. LEXIS 12597 (2006).

Disability benefits.

District of Columbia employee's claim for permanent partial disability (PPD) benefits arising from work-related injury was not an initial claim for benefits, and thus claim, after District had failed to respond to claim after 30 days, was not required to be deemed accepted, pursuant to section of Comprehensive Merit Personnel Act (CMPA) requiring CMPA claims to be deemed accepted if District had failed to make a finding of facts and an award for or against payment of compensation within 30 days; claimant's first claim arising from same injury had been a claim for temporary total disability (TTD) benefits filed eight years prior to her PPD claim. *Sheppard v. D.C. Dep't of*

Empl. Servs., 993 A.2d 525, 2010 D.C. App. LEXIS 205 (2010).

District of Columbia employee was not entitled to have her claim for restoration of disability benefits deemed accepted under sections of District of Columbia Code requiring city to deem a claim accepted if failed to decide on the claim within 30 days of the filing of the claim, even though Department of Employment Services (DOES) failed to respond to employee's request for reconsideration of reduction in benefits within 30 days; code sections applied only to commencement of claims, not reinstatement of claims. *Gaynell v. D.C. Dep't of Empl. Servs.*, 954 A.2d 1016, 2008 D.C. App. LEXIS 376 (2008).

Due process.

District of Columbia employee's action in federal court, alleging that District violated her due process and equal protection rights when it failed to process her claim for permanent disability benefits, was barred, on res judicata grounds, by prior District of Columbia Court of Appeals decision affirming administrative determination denying benefits; although prior decision was not based on employee's constitutional arguments, but rather on rejection of employee's contention that her benefits claim should be "deemed accepted" under D.C. Code because no administrative ruling was issued within 30 days, claim was nevertheless decided on the merits, because constitutional arguments were raised by employee and not addressed by the Court. *Sheppard v. District of Columbia*, 791 F.Supp.2d 1, 2011 U.S. Dist. LEXIS 59387 (2011).

For purposes of District of Columbia's motion for court reconsideration, based on need to correct clear error or manifest injustice, of its decision that failure to adopt written and consistently applied standards, policies and procedures governing termination, suspension and modification of disability compensation benefits violated due process, court's legal findings relating to notice and due process did not exceed constitutional requirements notwithstanding government's arguments that it was impracticable, if not impossible, for disability compensation program to reduce discretionary aspects of eligibility decisionmaking to writing and that due process did not require program to reduce to writing process involving use of professional judgment and expertise. *Lightfoot v. District of Columbia*, 355 F.Supp.2d 414, 2005 U.S. Dist. LEXIS 1195 (2005).

Absence of clear, published standards governing District of Columbia's disability compensation program failed to satisfy due process; while development of Termination of Benefits (TOB) notice system was improvement, reliance on reforms instituted through notice system was misplaced given inherent limitations

of notice itself, major problems existed with government's argument that present writings "defining" framework for termination, suspension or modification of disability benefits were both adequate and sufficiently available, and program's current procedures and framework for initial termination decisions, reconsideration decisions, and decisions on appeal were not in writing and did not provide sufficient notice to claimants. *Lightfoot v. District of Columbia*, 355 F.Supp.2d 414, 2005 U.S. Dist. LEXIS 1195 (2005).

District of Columbia's failure to adopt written and consistently applied standards, policies and procedures governing the termination, suspension and modification of disability compensation benefits violated the Due Process Clause of the Fifth Amendment; the system of terminating the disability benefits enjoyed by beneficiaries and other public employees gave no hint as to possible opportunities for beneficiaries to provide claims adjusters with information prior to the decision, nor did it provide any explicit clues as to the evaluation protocols and data weighting employed in the termination decision process, nor did it furnish any glimmer of insight into the standards of review for such decisions or the post-termination procedural rights of the beneficiaries. *Lightfoot v. District of Columbia*, 339 F.Supp.2d 78, 2004 U.S. Dist. LEXIS 21140 (2004), reversed by, remanded by 448 F.3d 392, 371 U.S. App. D.C. 96, 2006 U.S. App. LEXIS 12597 (2006).

Modification of award.

Rejection by ALJ of opinions of claimant's three treating physicians, in appeal of termination of temporary total disability (TTD) bene-

fits, was based on dispositive mistakes of fact and law, and finding by ALJ supporting termination was not based on substantial evidence, such that TTD benefits would be reinstated; opinions of the two physicians who treated claimant in the six years following injury were not stale and such opinions shed light on claimant's present condition, current treating physician reasonably relied on the evaluations of prior physicians when reaching his opinion, current treating physician had also treated claimant 11 times prior to providing his opinion, and opinion of physician who performed independent medical evaluation (IME) was suspect, as he had provided two prior opinions recommending that benefits be terminated, both of which opinions had been rejected in previous proceedings. *Changkit v. D.C. Dep't of Empl. Servs.*, 994 A.2d 380, 2010 D.C. App. LEXIS 220 (2010).

Pleadings.

District of Columbia employee failed to allege that claims adjuster with the District of Columbia Office of Risk Management, who allegedly refused to process her claim for medical expense reimbursement, impeded her ability to seek redress under the procedures set forth in District of Columbia code provision governing procedures for seeking disability compensation, as required to state claim that claims adjuster violated employee's Fifth Amendment due process rights; code provision provided all the process employee was entitled to. *Deschamps v. District of Columbia*, 582 F.Supp.2d 14, 2008 U.S. Dist. LEXIS 85539 (2008), dismissed by 2009 U.S. Dist. LEXIS 3788 (D.D.C. Jan. 21, 2009).

§ 1-623.25. Misbehavior at proceedings.

If an individual does the following: (1) Disobeys or resists a lawful order or process in proceedings under this subchapter before the Mayor or his or her representative; or (2) misbehaves during a hearing or so near the place of hearing as to obstruct it, the Mayor or his or her representative shall certify the facts to the Superior Court of the District of Columbia. The Court, in a summary manner, shall hear the evidence as to the acts complained of and, if the evidence warrants, punish the individual in the same manner and to the same extent as for a contempt committed before the Court, or commit the individual on the same conditions as if the forbidden act has occurred with reference to the process of or in the presence of the Court.

(Mar. 3, 1979, D.C. Law 2-139, § 2325, 25 DCR 5740.)

Section references. — This section is referred to in § 1-623.01.

Prior Codifications. — 1981 Ed., § 1-624.25.

1973 Ed., § 1-353.25.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see His-

torical and Statutory Notes following § 1-601.01.

§ 1-623.26. Subpoenas; oaths; examination of witnesses.

The Mayor, on any matter within his or her jurisdiction under this subchapter, shall have the authority to:

- (1) Issue subpoenas for and compel the attendance of witnesses within a radius of 100 miles of the District of Columbia;
- (2) Administer oaths;
- (3) Examine witnesses; and
- (4) Require the production of books, papers, documents, and other evidence.

(Mar. 3, 1979, D.C. Law 2-139, § 2326, 25 DCR 5740.)

Section references. — This section is referred to in § 1-623.01.

Prior Codifications. — 1981 Ed., § 1-624.26.
1973 Ed., § 1-353.26.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

CASE NOTES

Due process.

Failure of the Division of Disability Compensation to provide injured school teacher with a copy of the report of the impartial medical specialist prior to proceedings before the hearing officer and the Employees' Compensation Appeals Board did not amount to a violation of

due process in the absence of a request for the report in the proceedings before the hearing officer and the Board or an attempt to subpoena the medical specialist. D.C. Code 1981, § 1-624.26; U.S. Const. Amend. 14. *Smith v. District of Columbia Dep't of Employment Services*, 494 A.2d 1340, 1985 D.C. App. LEXIS 427 (1985).

§ 1-623.27. Representation; attorneys; fees.

(a) A claimant may authorize an individual to represent him or her in any proceeding before an administrative law judge under § 1-623.24(b). The claimant shall pay the fee for the representation.

(b)(1) For the purposes of this subsection, the term "successful prosecution" means obtaining an award of compensation that exceeds the amount that was previously awarded, offered, or determined. The term "successful prosecution" shall include a reinstatement or partial reinstatement of benefits which are reduced or terminated.

(2) If a person utilizes the services of an attorney-at-law in the successful prosecution of his or her claim under § 1-623.24(b) or before any court for review of any action, award, order, or decision, there shall be awarded, in addition to the award of compensation, in a compensation order, a reasonable attorney's fee, not to exceed 20% of the actual benefit secured, which fee award shall be paid directly by the Mayor or his or her designee to the attorney for the claimant in a lump sum within 30 days after the date of the compensation order.

(c) A person who receives any fees, other consideration, or any gratuity on account of services rendered as a representative of the claimant in an

administrative or judicial proceeding under this title, or who makes it a business to solicit employment for a lawyer, or for himself in respect of any claim or award for compensation, unless such consideration or any gratuity is approved as part of an order, shall be guilty of a misdemeanor and, upon conviction for each offense shall be punished by a fine of not more than \$1,000, or imprisonment for not more than one year, or both. This provision applies to all benefits secured through the efforts of the attorney, including settlements provided for under this subchapter.

(d) Repealed.

(e)(1) In all cases, fees for attorneys representing the claimant shall be approved in the manner herein provided. If any proceedings are had before the administrative law judge or any court for review of any action, award, order, or decision, the administrative law judge or court shall approve an attorney's fee for the work done before the administrative law judge or court, as the case may be, by the attorney for the claimant.

(2) An approved attorney's fee, in cases in which the obligation to pay the fee is upon the claimant, may be made a lien upon the compensation order due under an award, and the administrative law judge or court shall fix in the award approving the fee such lien and manner of payment.

(Mar. 3, 1979, D.C. Law 2-139, § 2327, 25 DCR 5740; Mar. 26, 1999, D.C. Law 12-175, § 2102(d), 45 DCR 7193; Mar. 8, 2007, D.C. Law 16-231, § 2(c), 54 DCR 365; Sept. 24, 2010, D.C. Law 18-223, § 1062(b)(15), 57 DCR 6242; Sept. 14, 2011, D.C. Law 19-21, § 1092, 58 DCR 6226.)

Section references. — This section is referred to in § 1-623.01.

Prior Codifications. — 1981 Ed., § 1-624.27.

1973 Ed., § 1-353.27.

Effect of amendments. — D.C. Law 16-231 rewrote this section, which formerly read:

“(a) A claimant may authorize an individual to represent him or her in any proceeding under this subchapter before the Mayor.

“(b) A claim for legal or other services furnished on behalf of a claimant in respect to a case, claim, or award for compensation under this subchapter is valid only if approved by the Mayor.”

D.C. Law 18-223 rewrote subsecs. (a) and (b); and repealed subsec. (d).

D.C. Law 19-21 rewrote subsec. (b); and added subsec. (e). Prior to amendment, subsec. (b) read as follows: “(b) In all cases, a claim for legal or other services furnished on behalf of a claimant in respect to a case, claim, or award for compensation under this title shall be valid only if approved by the administrative law judge.”

Emergency legislation. — For temporary amendment of section, see § 1702(d) of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), and § 1702(d) of the Fiscal Year

1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

For temporary (90-day) amendment of section, see § 1702(d) of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1999 (D.C. Act 13-41, March 31, 1999, 46 DCR 3446).

For temporary (90 day) amendment of section, see § 1062(b)(15) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 12-175. — For legislative history of D.C. Law 12-175, see Historical and Statutory Notes following § 1-603.01.

Legislative history of Law 16-231. — For Law 16-231, see notes following § 1-623.19.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 1-301.78.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 1-301.01.

Short title. — Short title: Section 1091 of D.C. Law 19-21 provided that subtitle I of title I of the act may be cited as “Disability Compensation Program Amendment Act of 2011”.

CASE NOTES

ANALYSIS

Law students.
Validity of rules.

Law students.

Fact that law students permissibly performed tasks in a public sector disability compensation case that otherwise would have fallen to full-fledged attorneys was not enough to exclude their work from the purview of the attorney fee statute in Comprehensive Merit Personnel Act, which provided that District of Columbia government employee who utilized services of attorney-at-law in successful prosecution of her claim was entitled to reasonable attorney fee award; critical point was that claimant was not represented before Depart-

ment of Employment Services by the law students alone, and instead, she was represented by the law students together with a licensed attorney-at-law under whose direction the students did their work. *Copeland v. D.C. Dep't of Empl. Servs.*, 3 A.3d 331, 2010 D.C. App. LEXIS 505 (2010).

Validity of rules.

Rules regulating attorney fees for contested workers' compensation claims arising under Comprehensive Merit Personnel Act did not violate due process. *U.S. Const. Amend. 5*; *D.C. Code 1981, § 1-624.1 et seq.*; *D.C. Mun. Regs. title 7, §§ 109.1-109.6, 1320.3. Cornelious v. District of Columbia Employees' Compensation Appeals Bd.*, 704 A.2d 853, 1997 D.C. App. LEXIS 251 (1997).

§ 1-623.28. Review of award.

(a) The Director of the Department of Employment Services may review an award for or against payment of compensation on application by either the claimant or the Office of the Corporation Counsel. An application for review pursuant to this subsection must be filed within 30 days after the date of the issuance of the decision of the Mayor or his or her designee pursuant to § 1-623.24(b)(1). The decision of the Mayor or his or her designee pursuant to § 1-623.24(b)(1) may be affirmed, modified, revised, or remanded in the discretion of the Director. The decision of the Mayor or his or her designee pursuant to § 1-623.24 shall be affirmed if supported by substantial competent evidence on the record. The Director shall notify the claimant, the Corporation Counsel, and the Office of Personnel in writing of his or her decision.

(b) The action of the Director in allowing or denying a payment under this subchapter may be reviewed by the District of Columbia Court of Appeals. An application for review to the District of Columbia Court of Appeals shall be filed within 30 days of the date of the issuance of the decision by the Director. The decision of the Director may be affirmed, modified, revised or remanded in the discretion of the Court. The decision of the Director shall be affirmed if supported by substantial competent evidence on the record. Credit shall be allowed in the accounts of a certifying or disbursing official for payment in accordance with that action.

(c) Notwithstanding subsection (b) of this section, an action in which the United States Department of Labor (or other federal authority) participated at any stage of the adjudication allowing or denying payment under this subchapter pursuant to an agreement with the District of Columbia is:

(1) Final and conclusive for all purposes and with respect to all questions of law or fact; and

(2) Not subject to review by a court by mandamus or otherwise.

(Mar. 3, 1979, D.C. Law 2-139, § 2328, 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(aa), 27 DCR 2632; Mar. 26, 1999, D.C. Law 12-175, § 2102(e), 45 DCR 7193; Oct. 3, 2001, D.C. Law 14-28, § 1203(f), 48 DCR 6981.)

Section references. — This section is referred to in §§ 1-623.01, 1-623.02a, 1-623.13, 1-623.24, 1-623.35, and 1-623.42.

Prior Codifications. — 1981 Ed., § 1-624.28.

1973 Ed., § 1-353.28.

Effect of amendments. — D.C. Law 14-28 inserted “of the Department of Employment Services” following “Director”; and, substituted “Office of Personnel” for “Benefits Administration Office of the Department of Employment Services”.

Emergency legislation. — For temporary amendment of section, see § 1702(e) of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), and § 1702(e) of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

For temporary (90-day) amendment of sec-

tion, see § 1702(e) of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1999 (D.C. Act 13-41, March 31, 1999, 46 DCR 3446).

For temporary (90 day) amendment of section, see § 1103(f) of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 3-81. — For legislative history of D.C. Law 3-81, see Historical and Statutory Notes following § 1-602.02.

Legislative history of Law 12-175. — For legislative history of D.C. Law 12-175, see Historical and Statutory Notes following § 1-603.01.

Legislative history of Law 14-28. — For Law 14-28, see notes following § 1-604.06.

CASE NOTES

ANALYSIS

In general.

Participation by Department of Labor.

Pleadings.

Purpose.

Substantial evidence.

In general.

Thirty-day period in which to seek review of decision of Employees' Compensation Appeals Board commenced when Board issued its final determination, rather than when order became “final” under Board's rule establishing period for filing petition for reconsideration. D.C. Code 1981, §§ 1-624.1 to 1-624.46, 1-624.28(b), 11-721(a)(1), 36-301(9)(B); Civil Rules, Pt. XV, Rule 1. *Jackson v. District of Columbia Employees' Compensation Appeals Bd.*, 537 A.2d 576, 1988 D.C. App. LEXIS 18 (1988).

Employees' Compensation Appeals Board was not estopped from asserting that employee's petition for review was not timely filed on grounds that Board's rule concerning final orders was confusing and ambiguous; rule established that order by Board was justiciable and reviewable as soon as it was issued and was not ambiguous, and employee had not shown that Board made any false representation to her or that it engaged in any other type of misconduct. D.C. Code 1981, §§ 1-624.1 to 1-624.46, 1-624.28(b), 11-721(a)(1), 36-301(9)(B). *Jackson v. District of Columbia Employees' Compensation Appeals Bd.*, 537 A.2d 576, 1988 D.C. App. LEXIS 18 (1988).

Participation by Department of Labor.

Findings, upon which nursing assistant employee's back injury disability claim was de-

cided, were established by the Department of Labor; therefore, superior court had no jurisdiction to hear employee's appeal of denial of disability benefits, even though final decision was made by Employees' Compensation Appeals Board under Merit Personnel Act, which allowed judicial review of workers' compensation findings, and even though employee's claim was originally denied by Department of Labor for filing deficiencies prior to effective date of agreement between District of Columbia and the Department of Labor precluding judicial review for disability claims in which Department of Labor participated at any stage of the adjudication. 5 U.S.C. § 8101 et seq.; D.C. Code 1981, §§ 1-624.1 et seq., 1-624.28. *District of Columbia Employees' Compensation Appeals Bd. v. Henry*, 516 A.2d 941, 1986 D.C. App. LEXIS 464 (1986).

Term “adjudication,” within provision of the Merit Personnel Act [D.C. Code 1981, § 1-624.28(c)] requiring that an adjudication in which the Department of Labor has participated be treated as final and conclusive for all purposes and, hence, as unreviewable by a court through mandamus or otherwise, must be interpreted as referring to involvement by the Department of Labor in the processing of workers' compensation claims by employees of the District of Columbia at the prehearing stage. *Smith v. District of Columbia Dep't of Employment Services*, 494 A.2d 1340, 1985 D.C. App. LEXIS 427 (1985).

Conduct of the Department of Labor when, pursuant to an agreement with the District of Columbia, it conducted a searching review of injured teacher's case, raised questions, and ordered an evaluation by an impartial special-

ist, leading directly to termination of temporary total disability benefits being received by teacher for injuries sustained when hit in head with a full can of soda thrown by a student, fell within review provision of Merit Personnel Act [D.C. Code 1981, § 1-624.28(c)] requiring that an "adjudication" in which the Department of Labor has participated be treated as final and conclusive for all purposes and, hence, as unreviewable by a court through mandamus or otherwise. *Smith v. District of Columbia Dep't of Employment Services*, 494 A.2d 1340, 1985 D.C. App. LEXIS 427 (1985).

Pleadings.

District of Columbia employee failed to allege that claims adjuster with the District of Columbia Office of Risk Management, who allegedly refused to process her claim for medical expense reimbursement, impeded her ability to seek redress under the procedures set forth in District of Columbia code provision governing procedures for seeking disability compensation, as required to state claim that claims adjuster violated employee's Fifth Amendment due process rights; code provision provided all the process employee was entitled to. *Deschamps v. District of Columbia*, 582 F.Supp.2d 14, 2008 U.S. Dist. LEXIS 85539 (2008), dismissed by

2009 U.S. Dist. LEXIS 3788 (D.D.C. Jan. 21, 2009).

Purpose.

Provision of the Merit Personnel Act [D.C. Code 1981, § 1-624.28(c)] requiring that an adjudication in which the Department of Labor has participated be treated as final and conclusive for all purposes and, hence, as unreviewable by a court through mandamus or otherwise was passed principally to preclude employees of the Department from being required to participate in court proceedings reviewing termination of disability benefits being received by an employee of the District of Columbia. *Smith v. District of Columbia Dep't of Employment Services*, 494 A.2d 1340, 1985 D.C. App. LEXIS 427 (1985).

Substantial evidence.

"Substantial evidence," for purposes of review of decision of Director of Employment Services (DOES) regarding entitlement of public employee to compensation under Comprehensive Merit Personnel Act (CMPA), is such relevant evidence as reasonable mind might accept as adequate to support conclusion. *Kralick v. D.C. Dep't of Empl. Servs.*, 842 A.2d 705, 2004 D.C. App. LEXIS 57 (2004).

§ 1-623.29. Recovery of overpayments.

(a) When an overpayment has been made to an individual under this subchapter because of an error of fact or law, under rules and regulations prescribed by the Mayor, either recovery of the overpayments shall be required of the individual or adjustment shall be made by decreasing later payments to which the individual is entitled. If the individual dies before the adjustment is completed, an adjustment shall be made by decreasing later benefits payable under this subchapter with respect to the individual's death.

(a-1) Before seeking to recover an overpayment or adjust benefits, the District government shall advise the individual in writing:

- (1) That the overpayment exists, and the amount of the overpayment;
- (2) That a preliminary finding shows that the individual either was or was not at fault in the creation of the overpayment;
- (3) That the individual has the right to inspect and copy government records relating to the overpayment; and
- (4) That the individual has the right to request a waiver of the adjustment or recovery and to present evidence that challenges the fact or amount of the overpayment or the preliminary finding that he or she was at fault in the creation of the overpayment.

(b)(1) Adjustment or recovery by the District government shall be waived when incorrect payment has been made to an individual who is without fault and recovery would defeat the purpose of this subchapter or would be against equity and good conscience.

- (2)(A) For the purposes of this subsection:

(i) The term “at fault” means that an individual has made an incorrect statement as to a material fact that he or she knew or should have known to be incorrect; failed to provide information which he or she knew or should have known to be material; or accepted a payment which he or she knew or should have known to be incorrect.

(ii) The term “without fault” means an individual is receiving benefits pursuant to a good faith dispute as to whether his or her medical condition entitles him or her to receive those benefits.

(iii) The phrase “recovery would defeat the purpose of this subchapter” means that recovery would cause hardship to a current or former claimant or other beneficiary because he or she needs substantially all of his or her current income, including compensation to meet current ordinary and necessary living expenses which shall include:

(I) Fixed living expenses such as food, housing, utilities, maintenance, insurance, and taxes;

(II) Medical, hospitalization, and related expenses;

(III) Expenses for the support of others for whom the individual is legally responsible; and

(IV) Expenses that may be reasonably considered as part of the individual’s standard of living.

(iv) The phrase “against equity and good conscience” means that recovery would cause severe financial hardship to an individual to make the overpayment.

(B) The determination of whether an individual was at fault regarding an overpayment shall depend upon the totality of circumstances surrounding the overpayment including the complexity of those circumstances and the individual’s capacity to realize that he or she is being overpaid. The government shall consider all pertinent circumstances including the individual’s age, intelligence, and any physical, mental, educational, or linguistic limitations including any difficulty with the English language.

(b-1)(1) Before the District government may seek to recover an overpayment or adjust benefits, the government must allow the individual the opportunity to present evidence to the government in writing or at a pre-recoupment hearing. The evidence must be presented or the hearing requested within 30 days of the date of the written notice of the overpayment. The 30-day requirement can be waived for good cause including mental or physical incapacity of the individual or lack of timely receipt of the notice of adjustment or recoupment.

(2) An individual shall be required to provide relevant information and documentation to support his or her claim of severe financial hardship or that the individual needs substantially all of his or her current income to meet current ordinary and necessary living expenses. Failure to submit the requested information within 30 days of the request shall result in denial of a request for a waiver and no further request for a waiver shall be considered until the requested information is furnished.

(c) A certifying or disbursing official is not liable for an amount certified or paid by him when:

(1) Adjustment or recovery of the amount is waived under subsection (b) of this section; or

(2) Adjustment under subsection (a) of this section is not completed before the death of all individuals against whose benefits deductions are authorized.

(Mar. 3, 1979, D.C. Law 2-139, § 2329, 25 DCR 5740; Mar. 26, 1999, D.C. Law 12-175, § 2102(f), 45 DCR 7193; Apr. 5, 2005, D.C. Law 15-290, § 2(f), 52 DCR 1449.)

Section references. — This section is referred to in §§ 1-623.01, 1-623.06, and 1-623.24.

Prior Codifications. — 1981 Ed., § 1-624.29.

1973 Ed., § 1-353.29.

Effect of amendments. — D.C. Law 15-290 added subsecs. (a-1) and (b-1); and rewrote subsec. (b) which had read:

“(b) Adjustment or recovery by the District of Columbia government may be waived when incorrect payment has been made to an individual who is without fault and when recovery would defeat the purpose of this subchapter or would be against equity and good conscience.”

Emergency legislation. — For temporary amendment of section, see § 1702(f) of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45

DCR 4794), and § 1702(f) of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

For temporary (90-day) amendment of section, see § 1702(f) of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1999 (D.C. Act 13-41, March 31, 1999, 46 DCR 3446).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 12-175. — For legislative history of D.C. Law 12-175, see Historical and Statutory Notes following § 1-603.01.

Legislative history of Law 15-290. — For Law 15-290, see notes following § 1-623.03.

§ 1-623.30. Assignment of claim.

An assignment of a claim for compensation under this subchapter is void. Compensation and claims for compensation are exempt from claims of creditors.

(Mar. 3, 1979, D.C. Law 2-139, § 2330, 25 DCR 5740.)

Section references. — This section is referred to in § 1-623.01.

Prior Codifications. — 1981 Ed., § 1-624.30.

1973 Ed., § 1-353.30.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

§ 1-623.31. Subrogation of the District of Columbia.

(a)(1) If an injury or death for which compensation is payable under this subchapter is caused under circumstances creating a legal liability on a person other than the District of Columbia government to pay damages, the Mayor may require the beneficiary to do the following:

(A) Assign to the District of Columbia government any right of action he or she may have to enforce the liability or any right he or she may have to share in money or other property received in satisfaction of that liability; or

(B) Prosecute the action in his or her own name.

(2) An employee required to appear as a party or witness in the prosecution of such an action is in an active duty status while so engaged.

(b) A beneficiary who refuses to assign or prosecute an action in his or her own name when required by the Mayor is not entitled to compensation under this subchapter.

(c) The Mayor may prosecute or compromise a cause of action assigned to the District of Columbia government. When the Mayor realizes on the cause of action, he or she shall deduct therefrom and place to the credit of the Employees' Compensation Fund the amount of compensation already paid to the beneficiary and the expense of realization or collection. Any surplus shall be paid to the beneficiary and credited on future payment of compensation payable for the same injury. The beneficiary is entitled to not less than one-fifth of the net amount of a settlement or recovery remaining after the expenses thereof have been deducted.

(Mar. 3, 1979, D.C. Law 2-139, § 2331, 25 DCR 5740.)

Section references. — This section is referred to in §§ 1-623.01 and 1-623.42.

Prior Codifications. — 1981 Ed., § 1-624.31.

1973 Ed., § 1-353.31.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

§ 1-623.32. Adjustment after recovery from third person.

If an injury or death for which compensation is payable under this subchapter is caused under circumstances creating a legal liability in a person other than the District of Columbia government to pay damages, and a beneficiary entitled to compensation from the District of Columbia government for that injury or death receives money or other property in satisfaction of that liability as a result of suit or settlement by him or her in his or her behalf, the beneficiary, after deducting therefrom the costs of suit and a reasonable attorney's fee, shall refund to the District of Columbia government the amount of compensation paid by the District of Columbia government and credit any surplus on future payments of compensation payable to him or her for the same injury. No court, insurer, attorney or other person shall pay or distribute to the beneficiary or his or her designee the proceeds of such suit or settlement without first satisfying or assuring satisfaction of the interest of the District of Columbia government. The amount refunded to the District of Columbia government shall be credited to the Employees' Compensation Fund. If compensation has not been paid to the beneficiary, he or she shall credit the money or property on compensation payable to him or her by the District of Columbia government for the same injury. However, the beneficiary is entitled to retain, as a minimum, at least one-fifth of the net amount of the money or other property remaining after the expenses of a suit or settlement have been deducted, and, in addition to this minimum and at the time of distribution, to retain an amount equivalent to a reasonable attorney's fee proportionate to the refund to the District of Columbia government.

(Mar. 3, 1979, D.C. Law 2-139, § 2332, 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(bb), 27 DCR 2632.)

Cross references. — Health care assistance reimbursement, rights to reimbursement, see § 4-601 et seq.

Section references. — This section is referred to in §§ 1-623.01 and 1-623.42.

Prior Codifications. — 1981 Ed., § 1-624.32.
1973 Ed., § 1-353.32.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 3-81. — For legislative history of D.C. Law 3-81, see Historical and Statutory Notes following § 1-602.02.

CASE NOTES

In general.

Comprehensive Merit Personnel Act entitled District of Columbia, as employer, to reimbursement for workers' compensation payments made to employees from tort recoveries

for those same injuries, regardless of nature of damages recovered by employees from third parties. D.C. Code 1981, § 1-624.32. *Lee v. District of Columbia*, 559 A.2d 308, 1989 D.C. App. LEXIS 104 (1989).

§ 1-623.33. Compensation in case of death.

(a) If death results from an injury sustained in the performance of duty, the District of Columbia government shall pay a monthly compensation equal to a percentage of the monthly pay of the deceased employee in accordance with the following schedule:

(1) To the surviving spouse or domestic partner, if there is no child, 50 percent;

(2) To the surviving spouse or domestic partner, if there is a child, 45 percent and in addition 15 percent for each child not to exceed a total of 75 percent for the surviving spouse or domestic partner and children;

(3) To the children, if there is no surviving spouse or domestic partner, 40 percent for 1 child and 15 percent additional for each additional child not to exceed a total of 75 percent, divided among the children, share and share alike;

(4) To the parents, if there is no surviving spouse or domestic partner, or child, as follows:

(A) Twenty percent, if 1 parent was wholly dependent on the employee at the time of death and the other was not dependent to any extent;

(B) Twenty percent to each, if both were wholly dependent; or

(C) A proportionate amount in the discretion of the Mayor if one or both were partly dependent. If there is a surviving spouse or domestic partner, or child, so much of the percentages are payable as, when added to the total percentages payable to the surviving spouse or domestic partner, and children, will not exceed a total of 75 percent;

(5)(A) To the brothers, sisters, grandparents, and grandchildren, if there is no surviving spouse or domestic partner, child, or dependent parent, as follows:

(i) Twenty percent, if one was wholly dependent on the employee at the time of death;

(ii) Thirty percent, if more than one were wholly dependent, divided among the dependents, share and share alike; or

(iii) Ten percent, if no one is wholly dependent but one or more is partly dependent, divided among the dependents, share and share alike; or

(B) If there is a surviving spouse or domestic partner, child, or dependent parent, so much of the percentages are payable as, when added to the

total percentages payable to the surviving spouse or domestic partner, children, and dependent parents, will not exceed a total of 75 percent.

(b)(1) The compensation payable under subsection (a) of this section is paid from the time of death until:

(A) A surviving spouse or domestic partner dies, remarries, or enters into a domestic partnership before reaching age 60;

(B) A child, brother, sister, or grandchild dies, marries or enters into a domestic partnership, or becomes 18 years of age or, if over age 18 and incapable of self-support, becomes capable of self-support; or

(C) A parent or grandparent dies, marries or enters into a domestic partnership, or ceases to be dependent.

(2) Notwithstanding the provisions of subparagraph (B) of paragraph (1) of this subsection, compensation payable to or for a child, a brother or sister, or grandchild that would otherwise end because the child, brother or sister, or grandchild has reached 18 years of age shall continue if he or she is a student as defined by § 1-623.01 at the time he or she reaches 18 years of age for so long as he or she continues to be such a student or until he or she marries. A surviving spouse or domestic partner who is entitled to benefits under this subchapter derived from more than one husband or wife shall elect one entitlement to be utilized.

(c) On the cessation of compensation under this section to or on the account of an individual, the compensation of the remaining individuals, entitled to compensation or the unexpired part of the period during which their compensation is payable is that which they would have received if they had been the only individuals entitled to compensation at the time of the death of the employee.

(d) When there are 2 or more classes of individuals entitled to compensation under this section and the apportionment of compensation under this section would result in injustice, the Mayor may modify the apportionment to meet the requirements of the case.

(e) In computing compensation under this section, the monthly pay is deemed not less than the minimum rate of basic pay for GS-2 as provided in § 5332 of Title 5 of the United States Code or its equivalent as provided in subchapter XI of this chapter. The total monthly compensation may not exceed:

(1) The monthly pay computed under § 1-623.14, except for increases authorized by § 1-623.41; or

(2) Seventy-five percent of the maximum monthly rate of basic pay for GS-15 as provided in § 5332 of Title 5 of the United States Code or its equivalent as provided in subchapter XI of this chapter for employees hired before January 1, 1980, or for employees who have a claim for compensation for disability pending on December 29, 1994, or 73% of the maximum monthly rate of basic pay for DS-12, Step 10 for employees hired after December 31, 1979, who make a claim for compensation for disability after December 29, 1994.

(f) Notwithstanding any funeral and burial expenses paid under § 1-623.34, there shall be paid a sum of \$200 to the personal representative of a deceased employee within the meaning of subparagraph (A) of paragraph (1) of § 1-623.01 for reimbursement of the costs of termination of the decedent's status as an employee of the District of Columbia government.

(Mar. 3, 1979, D.C. Law 2-139, § 2333, 25 DCR 5740; Sept. 26, 1995, D.C. Law 11-52, § 810(h), 42 DCR 3684; Sept. 12, 2008, D.C. Law 17-231, § 3(i), 55 DCR 6758.)

Section references. — This section is referred to in §§ 1-623.01, 1-623.09, 1-623.19, 1-623.35, and 1-623.38.

Prior Codifications. — 1981 Ed., § 1-624.33.

1973 Ed., § 1-353.33.

Effect of amendments. — D.C. Law 17-231 substituted “surviving spouse or domestic partner” for “widow or widower” or “widow, widower” throughout the section; in subsec. (b)(1), substituted “marries or enters into a domestic partnership” for “marries”; and, in subsec. (b)(1)(A), substituted “dies, remarries, or enters a domestic partnership” for “dies or remarries”.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 10-253. — For legislative history of D.C. Law 10-253, see Historical and Statutory Notes following § 1-624.01.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 1-623.10.

Legislative history of Law 17-231. — For Law 17-231, see notes following § 1-301.45.

§ 1-623.34. Funeral expenses; transportation of body.

(a) If death results from an injury sustained in the performance of duty, the District of Columbia government shall pay, to the personal representative of the deceased or otherwise, funeral and burial expenses not to exceed \$5,000, at the discretion of the Mayor.

(b) The body of an employee whose home was in the United States, at the discretion of the Mayor, may be embalmed and transported in a hermetically sealed casket to his or her home or last place of residence at the expense of the Employees’ Compensation Fund if:

(1) The employee dies from:

(A) The injury while away from his or her home or official station or outside the United States; or

(B) Other causes while away from his or her home or official station for the purposes of receiving medical or other services, appliances, supplies, or examination under this subchapter; and

(2) The relatives of the employee request the return of the body.

If the relatives do not request the return of the body of the employee, the Mayor may provide for its disposition and incur and pay from the Employees’ Compensation Fund the necessary and reasonable transportation, funeral and burial expenses.

(Mar. 3, 1979, D.C. Law 2-139, § 2334, 25 DCR 5740; Mar. 6, 1991, D.C. Law 8-198, § 3(f), 37 DCR 6890.)

Section references. — This section is referred to in §§ 1-623.01, 1-623.09, and 1-623.33.

Prior Codifications. — 1981 Ed., § 1-624.34.

1973 Ed., § 1-353.34.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 8-198. — For legislative history of D.C. Law 8-198, see Historical and Statutory Notes following § 1-623.01.

Editor’s notes. — Mayor authorized to issue rules: See Historical and Statutory Notes following § 1-623.01.

§ 1-623.35. Lump-sum settlements.

(a) The claimant may enter into an agreement with the Mayor or his or her designee for a lump-sum settlement. Such settlements must be in writing and signed by the Mayor or his or her designee and the claimant. If the claimant is represented by counsel, the settlement documents must also be signed by the attorney for the claimant. Such settlements are to be the complete and final dispositions of a case and once approved require no further action by the Mayor or his or her designee.

(b) In reaching an agreement for a lump-sum settlement pursuant to this section, the probability of the death of the beneficiary before the expiration of the period during which he or she is entitled to compensation shall be determined according to the most current available United States Life Tables, as developed by the United States Department of Health and Human Services, but the lump-sum payment to a surviving spouse or domestic partner of the deceased employee may not exceed 60 months' compensation. The probability of the occurrence of any other contingency affecting the amount or duration of compensation shall be disregarded.

(c) On remarriage or entry into a domestic partnership before reaching age 60, a surviving spouse or domestic partner entitled to compensation under § 1-623.33 shall be paid a lump-sum equal to 24 times the monthly compensation payment (excluding compensation on account of another individual) to which he or she was entitled immediately before the remarriage or entry into a domestic partnership.

(d) Lump-sum settlements may not be reviewed or modified under § 1-623.24 or § 1-623.28, except in case of fraud or misrepresentation by any party.

(Mar. 3, 1979, D.C. Law 2-139, § 2335, 25 DCR 5740; Mar. 26, 1999, D.C. Law 12-175, § 2102(g), 45 DCR 7193; Sept. 12, 2008, D.C. Law 17-231, § 3(j), 55 DCR 6758.)

Section references. — This section is referred to in §§ 1-623.01 and 1-623.37.

Prior Codifications. — 1981 Ed., § 1-624.35.

1973 Ed., § 1-353.35.

Effect of amendments. — D.C. Law 17-231 substituted “surviving spouse or domestic partner” for “widow or widower”; in subsec. (c), substituted “remarriage or enters into a domestic partnership” for “remarriage”.

Emergency legislation. — For temporary amendment of section, see § 1702(g) of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), and § 1702(g) of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

For temporary (90-day) amendment of section, see § 1702(g) of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1999 (D.C. Act 13-41, March 31, 1999, 46 DCR 3446).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 12-175. — For legislative history of D.C. Law 12-175, see Historical and Statutory Notes following § 1-603.01.

Legislative history of Law 17-231. — For Law 17-231, see notes following § 1-301.45.

CASE NOTES

Construction and application.

Proposed lump-sum settlement agreement between a disabled District of Columbia employee and the District did not take effect because it was not approved in writing by the mayor's designee, the Director of the Department of Employment Services (DOES), pursuant to statute requiring that such agreements must be in writing and signed by the mayor or his designee. *Leonard v. District of Columbia*, 801 A.2d 82, 2002 D.C. App. LEXIS 318 (2002).

District of Columbia employee could not reasonably have relied on purported authority of claims examiner, as distinct from the mayor or

his designee, to bind the District, and thus, District was not estopped from denying liability under proposed lump-sum settlement agreement between employee and the District which was not approved in writing by the mayor's designee, the Director of the Department of Employment Services (DOES), pursuant to statute requiring that such agreements must be in writing and signed by the mayor or his designee; employee was chargeable with knowledge of requirements for lump-sum settlement agreement. *Leonard v. District of Columbia*, 801 A.2d 82, 2002 D.C. App. LEXIS 318 (2002).

§ 1-623.36. Injury incurred; initial payments outside United States.

If an employee is injured outside the continental United States, the Mayor may arrange and provide for initial payment of compensation and initial furnishing of other benefits under this subchapter by an employee or agent of the District of Columbia government designated by the Mayor for that purpose in the locality in which the employee was employed or the injury incurred.

(Mar. 3, 1979, D.C. Law 2-139, § 2336, 25 DCR 5740.)

Section references. — This section is referred to in § 1-623.01.

Prior Codifications. — 1981 Ed., § 1-624.36.

1973 Ed., § 1-353.36.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

§ 1-623.37. Compensation for noncitizens and nonresidents.

(a) When the Mayor finds that the amount of compensation payable to an employee who is neither a citizen nor resident of the United States or Canada, or payable to a dependent of such an employee, is substantially disproportionate to compensation for disability or death payable in similar cases under local statute, regulations, custom, or otherwise at the place outside the continental United States or Canada where the employee is working at the time of injury, he or she may provide for payment of compensation on a basis reasonably in accord with prevailing local payments in similar cases by:

(1) The adoption or adaption of the substantive features, by a schedule or otherwise, of local workmen's compensation provisions or other local statute, regulation, or custom applicable in cases of personal injury or death; or

(2) Establishing special schedules of compensation for injury, death and loss of use of members and functions of the body for specific classes of employees, areas, and place. Irrespective of the basis adopted, the Mayor may at any time:

(A) Modify or limit the maximum monthly and total aggregate payments for injury, death, and medical or other benefits;

(B) Modify or limit the percentages of the wage of the employee payable as compensation for the injury or death; and

(C) Modify, limit, or redesignate the class or classes of beneficiaries entitled to death benefits, including the designation of persons, representatives, or groups entitled to payment under local statute or custom whether or not included in the classes of beneficiaries otherwise specified by this subchapter.

(b) In a case under this section, the Mayor or his or her designee may:

(1) Make a lump sum award in the manner prescribed by § 1-623.35 when he or she, or his or her designee, considers it to be for the best interest of the District of Columbia government; and

(2) Compromise and pay a claim for benefits, including a claim in which there is a dispute as to jurisdiction or other fact or a question of law. Compensation paid under this subsection is instead of all other compensation from the District of Columbia government for the same injury or death, and a payment made under this subsection is deemed compensation under this subchapter and satisfaction of all liability of the District of Columbia government in respect to the particular injury or death.

(c) The Mayor may delegate to an employee or agency of the District of Columbia government, with such limitations and right of review as he or she considers advisable, authority to process, adjudicate, commute by lump-sum award, compromise and pay a claim or class of claims for compensation, and to provide other benefits, locally, under this section, in accordance with such rules, regulations, and instructions as the Mayor considers necessary. For this purpose, the Mayor may provide or transfer funds, including reimbursement of amounts paid under this subchapter.

(d) The Mayor may waive the application of this subchapter in whole or in part and for such period or periods as he or she may fix if the Mayor finds that:

(1) Conditions prevent the establishment of facilities for processing and adjudicating claims under this section; or

(2) Claimants under this section are alien enemies.

(e) The Mayor may apply this section retrospectively with adjustment of compensation and benefits as he or she considers necessary and proper.

(Mar. 3, 1979, D.C. Law 2-139, § 2337, 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(cc), 27 DCR 2632.)

Section references. — This section is referred to in § 1-623.01.

Prior Codifications. — 1981 Ed., § 1-624.37.

1973 Ed., § 1-353.37.

Legislative history of Law 2-139. — For

legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 3-81. — For legislative history of D.C. Law 3-81, see Historical and Statutory Notes following § 1-602.02.

§ 1-623.38. Minimum limit modification for noncitizens and aliens.

The minimum limit on monthly compensation for disability under § 1-623.12 and the minimum limit on monthly pay on which death compensation is computed under § 1-623.33 do not apply in the case of a noncitizen employee

or a class or classes of noncitizen employees who sustain injury outside the continental United States. The Mayor may establish a minimum monthly pay on which death compensation is computed in the case of a class or classes of such noncitizen employees.

(Mar. 3, 1979, D.C. Law 2-139, § 2338, 25 DCR 5740.)

Section references. — This section is referred to in §§ 1-623.01 and 1-623.12.

Prior Codifications. — 1981 Ed., § 1-624.38.

1973 Ed., § 1-353.38.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

§ 1-623.39. Student-employees.

A student-employee, as defined by § 5351 of Title 5 of the United States Code, who suffers disability or death as a result of personal injury arising out of and in the course of training, or incurred in the performance of duties in connection with that training, is considered for the purpose of this subchapter an employee who incurred the injury in the performance of duty.

(Mar. 3, 1979, D.C. Law 2-139, § 2339, 25 DCR 5740.)

Section references. — This section is referred to in § 1-623.01.

Prior Codifications. — 1981 Ed., § 1-624.39.

1973 Ed., § 1-353.39.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

§ 1-623.40. Administration. [Repealed].

Repealed.

(Mar. 3, 1979, D.C. Law 2-139, § 2340, 25 DCR 5740; Sept. 26, 1995, D.C. Law 11-52, § 810(i), 42 DCR 3684; Oct. 3, 2001, D.C. Law 14-28, § 1203(g), 48 DCR 6981.)

Prior Codifications. — 1981 Ed., § 1-624.40.

1973 Ed., § 1-353.40.

Emergency legislation. — For temporary (90 day) repeal of section, see § 1103(g) of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 10-253. — For legislative history of D.C. Law 10-253, see Historical and Statutory Notes following § 1-623.01.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 1-623.10.

Legislative history of Law 14-28. — For Law 14-28, see notes following § 1-604.06.

§ 1-623.41. Cost-of-living adjustment of compensation.

On or after April 1, 1990, the Mayor shall award cost-of-living increases in compensation for disability or death whenever a cost-of-living increase is awarded pursuant to §§ 1-611.05 and 1-611.06. The percentage amount and effective date of those increases shall be the same as for any increase granted

under these sections. This section shall not apply to any collective bargaining agreements that are to the contrary.

(Mar. 3, 1979, D.C. Law 2-139, § 2341, 25 DCR 5740; Mar. 15, 1990, D.C. Law 8-92, § 2, 37 DCR 778; Apr. 5, 2005, D.C. Law 15-290, § 2(g), 52 DCR 1449.)

Section references. — This section is referred to in §§ 1-623.01 and 1-623.33.

Prior Codifications. — 1981 Ed., § 1-624.41.

1973 Ed., § 1-353.41.

Effect of amendments. — D.C. Law 15-290 rewrote the section which had read:

“On or after April 1, 1990, increases in compensation payable due to disability or death shall be in the same percentage amount and shall have the same effective date as any base salary increase granted, pursuant to §§ 1-611.05 and 1-611.06, to employees in the Career and Excepted Services not covered by collective bargaining. To be eligible for the increase, the disability or death of the employee must have occurred at least 1 year prior to the effective date of the increase.”

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 8-92. — Law 8-92 was introduced in Council and assigned Bill No. 8-207, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 19, 1989, and January 2, 1990, respectively. Signed by the Mayor on January 11, 1990, it was assigned Act No. 8-143 and transmitted to both Houses of Congress for its review.

Legislative history of Law 15-290. — For Law 15-290, see notes following § 1-623.03.

§ 1-623.42. Employees' Compensation Fund.

(a)(1) For the purposes of this section, the term “administrative expenses” means, except as provided by subsection (b) of this section, any cost of administration or operation, whether executive, clerical, or otherwise, discretionary or non-discretionary, that is not a payment directed to medical care, vocational rehabilitation, or employee compensation and benefits; provided, that the term “administrative expenses” shall not include expenses for legal service performed by or for the Mayor under §§ 1-623.31 and 1-623.32.

(2) There is established in the District of Columbia government the Employees' Compensation Fund (“Fund”), which shall consist of sums that the Council of the District of Columbia government or Congress, from time to time, may appropriate for or transfer to it and amounts that otherwise accrue to it under this chapter or other statute. The Fund is available without time limit for the payment of compensation and other benefits and expenses, except administrative expenses, authorized by this chapter or any extension or application thereof, except as otherwise provided by this subchapter or other statute.

(3) Notwithstanding the provisions of paragraph (2) of this subsection, for fiscal year 2009 only, an amount not to exceed \$904,000 may be expended for the administrative expenses of the Fund.

(b) The costs and expenses of the representation of the Mayor or his or her designee by the Corporation Counsel in proceedings under §§ 1-623.24 and 1-623.28 shall be paid out of the Employees' Compensation Fund established by this section.

(Mar. 3, 1979, D.C. Law 2-139, § 2342, 25 DCR 5740; Mar. 26, 1999, D.C. Law 12-175, § 2102(h), 45 DCR 7193; Apr. 20, 1999, D.C. Law 12-264, § 5(e), 46 DCR 2118; Aug. 16, 2008, D.C. Law 17-219, § 1013, 55 DCR 7598.)

Section references. — This section is referred to in § 1-623.01.

Prior Codifications. — 1981 Ed., § 1-624.42.

1973 Ed., § 1-353.42.

Effect of amendments. — D.C. Law 17-219 rewrote subsec. (a).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of the Fiscal Year 1999 Disability Compensation Administrative Financing Temporary Amendment Act of 1998 (D.C. Law 12-239, April 20, 1999, law notification 46 DCR 4152).

Emergency legislation. — For temporary amendment of section, see § 1702(h) of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), and § 1702(h) of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

For temporary amendment of section, see § 2 of the Disability Compensation Administrative Financing Emergency Amendment Act of 1998

(D.C. Act 12-445, September 8, 1998, 45 DCR 6663), and § 2 of the Fiscal Year 1999 Disability Compensation Administrative Financing Emergency Amendment Act of 1998 (D.C. Act 12-572, January 12, 1999, 46 DCR 903).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 12-175. — For legislative history of D.C. Law 12-175, see Historical and Statutory Notes following § 1-603.01.

Legislative history of Law 12-264. — For legislative history of D.C. Law 12-264, see Historical and Statutory Notes following § 1-603.01.

Legislative history of Law 17-219. — For Law 17-219, see notes following § 1-308.29.

Short title. — Short title: Section 1012 of D.C. Law 17-219 provided that subtitle F of title I of the act may be cited as the "Employee Compensation Fund Allowance and Clarification Amendment Act of 2008".

§ 1-623.43. Compensation leave.

Any employee who has used leave as a result of a job-related injury or occupational disease or illness approved by the District government may have such leave restored to his or her credit in accordance with rules and regulations established by the Mayor.

(Mar. 3, 1979, D.C. Law 2-139, § 2343, 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(dd), 27 DCR 2632.)

Section references. — This section is referred to in § 1-623.01.

Prior Codifications. — 1981 Ed., § 1-624.43.

1973 Ed., § 1-353.43.

Legislative history of Law 2-139. — For

legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 3-81. — For legislative history of D.C. Law 3-81, see Historical and Statutory Notes following § 1-602.02.

§ 1-623.44. Rules and regulations.

The Mayor shall promulgate rules necessary or useful for the administration and enforcement of this subchapter, including rules for modifying an award of compensation and for the conduct of hearings under § 1-623.24. An award may be modified only in accordance with those regulations which shall include the following criteria relating to:

- (1) Exchange of information including a claimant's opportunity to provide medical, vocational, or other information to the Mayor prior to a modification of benefits;
- (2) Modification procedures including the manner and content of notices to a claimant concerning a proposed modification;
- (3) The procedures for providing additional information concerning a

claim, the type of information that may be submitted, and the manner in which all information will be considered;

(4) When a modification may properly be made, and the manner of notice to a claimant of the final decision;

(5) Physical examinations including the weight that shall be given to competing medical reports;

(6) File access including the manner in which a claimant or his or her attorney may request access to the claimant's file;

(7) Standard of review including the standard applicable to a modification process or appeal under this chapter;

(8) Deadlines and extensions applicable to claimants and the Mayor, which also shall provide that a claimant's failure to miss a deadline will be excused when good cause is found, a definition of "good cause", and the procedures for determining whether good cause exists; and

(9) Bases for modification including the legal bases upon which an award of compensation may be modified and the standards to determine whether a claimant's change of condition would justify the modification.

(Mar. 3, 1979, D.C. Law 2-139, § 2344, 25 DCR 5740; Oct. 3, 2001, D.C. Law 14-28, § 1203(h), 48 DCR 6981; Apr. 5, 2005, D.C. Law 15-290, § 2(h), 52 DCR 1449; Apr. 7, 2006, D.C. Law 16-91, § 122, 52 DCR 10637; Sept. 24, 2010, D.C. Law 18-223, § 1062(b)(16), 57 DCR 6242.)

Section references. — This section is referred to in § 1-623.01.

Prior Codifications. — 1981 Ed., § 1-624.44.

1973 Ed., § 1-353.44.

Effect of amendments. — D.C. Law 14-28 deleted the second sentence which had read: "The rules and regulations shall provide for an Employees' Compensation Appeals Board of 3 individuals designated or appointed by the Mayor with authority to hear and, subject to applicable law and the rules and regulations of the Mayor, make final administrative decisions on appeals taken from determinations and awards with respect to claims of employees."

D.C. Law 15-290 rewrote the section which had read:

"The Mayor may prescribe rules and regulations necessary for the administration and enforcement of this subchapter including rules and regulations for the conduct of hearings under § 1-623.24. The Mayor may determine the nature and extent of the proof and evidence required to establish the right to benefits under this subchapter without regard to the date of injury or death for which claim is made."

D.C. Law 16-91, in par. (4), validated a previously made technical correction.

D.C. Law 18-223, substituted "The Mayor shall promulgate rules necessary or useful for the administration and enforcement of this subchapter, including rules for modifying an

award of compensation and for the conduct of hearings under § 1-623.24." for "The Mayor shall promulgate regulations that explain the standards and procedures that govern determinations for the modification of an award of compensation."

Emergency legislation. — For temporary (90 day) amendment of section, see § 1103(h) of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

For temporary (90 day) amendment of section, see § 1062(b)(16) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 14-28. — For Law 14-28, see notes following § 1-604.06.

Legislative history of Law 15-290. — For Law 15-290, see notes following § 1-623.03.

Legislative history of Law 16-91. — For Law 16-91, see notes following § 1-301.45.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 1-301.78.

Delegation of Authority. — Delegation of Rulemaking Authority for Matters Within the Jurisdiction of the Office of Risk Management, see Mayor's Order 2004-198, December 14, 2004 (51 DCR 11887).

§ 1-623.45. Career and Educational Services retention rights.

(a) In the event the individual resumes employment with the District government, the entire time during which the employee was receiving compensation under this subchapter shall be credited to the employee for the purposes of within-grade step increases, retention purposes, and other rights and benefits based upon length of service.

(b) Under rules and regulations issued by the Mayor the department or agency which was the last employer shall:

(1) Immediately and unconditionally accord the employee the right to resume his or her former, or an equivalent, position as well as all other attendant rights which the employee would have had or acquired in his or her former position had he or she not been injured or had a disability, including the rights to tenure, promotion, and safeguards in reduction-in-force procedures, provided that the injury or disability has been overcome within two years after the date of commencement of compensation and provision of all necessary medical treatment needed to lessen disability or from the time compensable disability recurs if the recurrence begins after the injured employee resumes regular full-time employment with the District of Columbia government; or

(2) If the injury or disability is overcome within a period of more than 2 years after the date of commencement of payment of compensation or the provision of medical treatment by the Disability Compensation Fund, make all reasonable efforts to place, and accord priority to placing the employee in his or her former or equivalent position within such department or agency, or within any other department or agency.

(c) Nothing in this provision shall exclude the responsibility of the employing agency to re-employ an employee in a full-duty or part-time status.

(Mar. 3, 1979, D.C. Law 2-139, § 2345, 25 DCR 5740; Sept. 26, 1995, D.C. Law 11-52, § 810(j), 42 DCR 3684; Oct. 3, 2001, D.C. Law 14-28, § 1203(i), 48 DCR 6981; Apr. 5, 2005, D.C. Law 15-290, § 2(i), 52 DCR 1449; Mar. 8, 2007, D.C. Law 16-231, § 2(d), 54 DCR 365; Mar. 14, 2007, D.C. Law 16-294, § 2(b), 54 DCR 1086; Apr. 24, 2007, D.C. Law 16-305, § 3(l), 53 DCR 6198.)

Section references. — This section is referred to in § 1-623.01.

Prior Codifications. — 1981 Ed., § 1-624.45.

1973 Ed., § 1-353.45.

Effect of amendments. — D.C. Law 14-28, in subsecs. (b)(1) and (2), substituted “1 year” for “2 years”; and, in subsec. (c), substituted “full-duty or part-time status” for “less than full duty status”.

D.C. Law 15-290 rewrote pars. (1) and (2) of subsec. (b) which had read:

“(1) Immediately and unconditionally accord the employee, if the injury or disability has been overcome within 1 year after the date of commencement of compensation or from the

time compensable disability recurs if the recurrence begins after the injured employee resumes regular full-time employment with the District of Columbia government, the right to resume his or her former, or an equivalent, position as well as all other attendant rights which the employee would have had or acquired in his or her former position had he or she not been injured or disabled, including the rights to tenure, promotion, and safeguards in reduction-in-force procedures; and

“(2) If the injury or disability is overcome within a period of more than 1 year after the date of commencement of compensation, make all reasonable efforts to place, and accord priority to placing, the employee in his or her

former or equivalent position within such department or agency, or within any other department or agency.”

D.C. Law 16-231, in subsec. (b)(1), inserted “and provision of all necessary medical treatment needed to lessen disability” following “after the date of commencement of compensation”.

D.C. Law 16-294, in subsec. (b)(1), substituted “two years” for “one year”.

D.C. Law 16-305, in subsec. (b)(1), substituted “had a disability” for “disabled”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 1103(i) of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 10-253. — For legislative history of D.C. Law 10-253, see Historical and Statutory Notes following § 1-623.01.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 1-623.10.

Legislative history of Law 14-28. — For Law 14-28, see notes following § 1-604.06.

Legislative history of Law 15-290. — For Law 15-290, see notes following § 1-623.03.

Legislative history of Law 16-231. — For Law 16-231, see notes following § 1-623.19.

Legislative history of Law 16-294. — For Law 16-294, see notes following § 1-623.19.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 1-307.02.

Editor’s notes. — Section 2(c) of D.C. Law 16-294 provided that this section shall apply as of April 5, 2005.

§ 1-623.46. Transfer of authority.

In accordance with § 1-202.04(e), the disability compensation functions previously exercised by the United States Secretary of Labor relating to the processing of claims by injured employees of the District of Columbia are transferred to the Mayor on the date that this chapter becomes effective as provided in § 1-636.02.

(Mar. 3, 1979, D.C. Law 2-139, § 2346, 25 DCR 5740.)

Prior Codifications. — 1981 Ed., § 1-624.46.

1973 Ed., § 1-353.46.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Editor’s notes. — Application of 1980

amendments to subchapter: Section 3 of the Act of August 7, 1980, D.C. Law 3-81, provided that the amendments made throughout this subchapter by §§ 2(p) through (dd) of that Act shall not apply to applications for disability compensation filed between May 3, 1979, and August 16, 1979, and on February 19, 1980.

§ 1-623.47. Modified work program.

(a) On a monitored, progressive basis, the Mayor may direct employees with temporary or partial disabilities to participate in a modified work program designed to provide consistent and appropriate assistance to employees to return to work quickly and safely.

(b) Agencies shall provide employees who sustain an injury during the course of their employment with a modified duty assignment, if available.

(c) The modified duty assignment shall be temporary. The modified duty assignment may have a minimum duration of 2 basic nonovertime workdays, as that term is defined in § 1-612.01, and a maximum duration of 180 days (assigned in 90-day increments) in any 12-month period. For those employees whose basic nonovertime workday may exceed 8 hours such as police officers or firefighters, the basic nonovertime workday shall be the shift, or tour of duty,

worked on a regularly recurring basis for the 3 months immediately preceding the injury.

(d) An employee who is able to perform the duties of his or her pre-injury position during the modified duty assignment period shall be entitled to receive compensation at the same rate of pay as received prior to the injury.

(e) An employee who is not able to perform the full scope of duties of his or her pre-injury position shall receive a modified rate of compensation closest to the rate prior to the injury, without exceeding it. A partial disability benefit shall be applied if appropriate, at the rate of $66\frac{2}{3}\%$ difference between the pre-disability rate and the modified duty rate.

(f) The pre-injury rate of pay shall not be exceeded during the modified duty assignment.

(g) The District of Columbia government shall attempt to place injured employees within their pre-injury agency, or within another agency when modified work assignments are not available within the pre-injury agency.

(h) Employees shall have the appropriate medical release from their treating physician to perform modified duty. The essential job functions of the modified work assignment shall be clearly described. The medical release shall include any specified restrictions and their anticipated duration.

(i) Employees with disabilities who are offered a modified duty assignment and elect not to accept the modified duty assignment shall forfeit any further disability compensation benefits.

(j) The employee shall be given written notice of the available temporary modified duty assignment.

(Mar. 3, 1979, D.C. Law 2-139, § 2347, as added Oct. 3, 2001, D.C. Law 14-28, § 1203(j), 48 DCR 6981; Apr. 24, 2007, D.C. Law 16-305, § 5, 53 DCR 6198; Sept. 24, 2010, D.C. Law 18-223, § 1062(b)(17), 57 DCR 6242.)

Cross references. — Merit system, effective date provisions, see § 1-636.02.

Effect of amendments. — D.C. Law 16-305, in subsec. (a), substituted “employees with temporary or partial disabilities” for “temporarily or partially disabled employees”; and in subsec. (i), substituted “Employees with disabilities” for “Disabled employees”.

D.C. Law 18-223, in subsec. (c), substituted “180 days (assigned in 90-day increments) in any 12-month period” for “90 calendar days”; and added subsec. (j).

Emergency legislation. — For temporary (90 day) addition of section, see § 1103(j) of

Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

For temporary (90 day) amendment of section, see § 1062(b)(17) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 14-28. — For Law 14-28, see notes following § 1-604.06.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 1-307.02.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 1-301.78.

Subchapter XXIV. Reductions-in-Force.

§ 1-624.01. Policy.

The Mayor and the District of Columbia Board of Education shall issue rules and regulations establishing a procedure for the orderly furloughing of employees or termination of employees, taking full account of nondiscrimination provisions and appointments objectives of this chapter. Each agency shall

be considered a competitive area for reduction-in-force purposes. A personnel authority may establish lesser competitive areas within an agency on the basis of all or a clearly identifiable segment of an agency's mission or a division or major subdivision of an agency. When as a result of a reorganization order a function is transferred from 1 District agency to another District agency, the procedures for transferring the employees identified with the continuing function shall be negotiated with the recognized labor organization.

(Mar. 3, 1979, D.C. Law 2-139, § 2401, 25 DCR 5740; Sept. 26, 1980, D.C. Law 3-109, § 4(b), 27 DCR 3785; Mar. 5, 1996, D.C. Law 11-98, § 201(a), 43 DCR 5; Apr. 26, 1996, 110 Stat. 216, Pub. L. 104-134, § 149(a); Sept. 9, 1996, 110 Stat. 2372, Pub. L. 104-194, § 140(a); June 10, 1998, D.C. Law 12-124, § 101(x)(1), 45 DCR 2464.)

Prior Codifications. — 1981 Ed., § 1-625.1.

1973 Ed., § 1-354.1.

Emergency legislation. — For temporary amendment of § 401 of the Omnibus Personnel Reform Amendment Act of 1998 (D.C. Law 12-124), see § 2 of the Personnel Reform Technical Amendment Emergency Act of 1998 (D.C. Act 12-520, December 4, 1998, 45 DCR 9049).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 3-109. — For legislative history of D.C. Law 3-109, see Historical and Statutory Notes following § 1-616.01.

Legislative history of Law 11-78. — For legislative history of D.C. Law 11-78, see Historical and Statutory Notes following § 1-624.07.

Legislative history of Law 11-98. — For legislative history of D.C. Law 11-98, see Historical and Statutory Notes following § 1-624.07.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Mayor's Orders. — Furloughing of Employees During Fiscal Year 2011, see Mayor's Order 2011-44, February 18, 2011 (58 DCR 1497).

Editor's notes. — Limitations on total number of positions: Section 3 of D.C. Law 9-47 provided that at no time shall the total number of positions, outside existing collective bargaining units, at grades 11 and above on the District Service Schedule and at equivalent levels in other salary or pay schedules, exceed the number of such positions in an agency on July 1, 1991, minus the number of positions abolished by the agency pursuant to this act.

Reduction in workforce: Section 1405 of D.C. Law 11-52 provided for the elimination of at least 1,200 additional specific funded positions prior to September 30, 1995, through early retirement, a voluntary severance incentive program, and a reduction in force.

Applicability of § 101(x) of D.C. Law 12-124: Section 401(a) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(d), (k), (p), (s), and (x) of this act shall apply upon the enactment of legislation by the United States Congress that states the following: "Notwithstanding any other law, section 101(d), (k), (p), (s), and (x) of the Omnibus Personnel Reform Act of 1998, adopted by the Council of the District of Columbia is enacted into law." Section 134 of Title I of Division C of Pub. L. 105-277, 112 Stat. 2681-596, provided that "Notwithstanding any other law, sections 101(d), (k), (p), (s), and (x) of the Omnibus Personnel Reform Amendment Act of 1998, D.C. Law 12-124, effective June 11, 1998, are enacted into law."

CASE NOTES

ANALYSIS

"Reduction in force" defined.
Challenges to rules.
Educational employees.
Hearings.
In general.
Retiring employees.

"Reduction in force" defined.

"Reduction in force," for purposes of District of Columbia employee appeal rights, is reduction in personnel caused by lack of funding or discontinuance or curtailment of department, program, or function of agency; reduction in force, unlike "adverse action," has no role as punitive or corrective action and should leave

no blemish on employee's records and, in contrast to "grievance," reduction in force is initiated by agency rather than employee. D.C. Code 1981, §§ 1-602.3(b), 1-617.1 et seq., 1-617.1, 1-617.2, 1-625.1 et seq. *Davis v. University of Dist. of Columbia*, 603 A.2d 849, 1992 D.C. App. LEXIS 34 (1992).

Challenges to rules.

Where legislation enacted by Congress expressly authorized emergency rules, which, in turn, instituted new reduction-in-force (RIF) procedures for the District of Columbia, teachers laid off pursuant to the RIF could not challenge the rules under the contract clause of the United States Constitution. U.S. Const. Art. 1, § 10, cl. 1; D.C. Code 1981, § 1-625.1. *Washington Teachers' Union Local No. 6 v. Board of Educ.*, 109 F.3d 774, 1997 U.S. App. LEXIS 5306 (C.A.D.C. 1997).

Educational employees.

Tenured faculty union and public university, as parties to collective bargaining agreement (CBA), continued to act as if they were performing under CBA, and thus material terms of CBA survived, were binding, and governed reduction in force (RIF), even though CBA had expired, where there was no indication that either university or union had contrary intention, and settlement agreement in prior action brought by union in response to previous RIF, showed that both parties were adhering to RIF provisions of expired CBA. *Hahn v. Univ. of the Dist. of Columbia*, 789 A.2d 1252, 2002 D.C. App. LEXIS 7 (2002).

Fact that the Council of the District of Columbia specifically exempted university from the statute requiring agencies to define competitive work areas as agency-wide for reduction in force (RIF) purposes demonstrated that it did not intend university to define its competitive work areas on a university-wide basis for RIF purposes. *Harrison v. Board of Trustees of the Univ. of the District of Columbia*, 758 A.2d 19, 2000 D.C. App. LEXIS 194 (2000).

General provisions of the Comprehensive Merit Personnel Act authorizing appeals from "adverse actions" and "grievances" do not permit university employees to appeal from dismissal resulting from reduction in force, in light of specific provisions excluding educational employees from subchapter granting employees right to appeal reduction in force. D.C. Code 1981, §§ 1-602.3(b), 1-617.1 et seq., 1-617.1, 1-617.2, 1-625.1 et seq. *Davis v. University of Dist. of Columbia*, 603 A.2d 849, 1992 D.C. App. LEXIS 34 (1992).

Hearings.

ALJ abused his discretion in failing to conduct an evidentiary hearing on whether termination of a District of Columbia employee by Department of Corrections (DOC) due to a

mandated reduction in force (RIF) complied with applicable regulations; documents submitted in response to employee's contentions obfuscated rather than clarified the material issues, ALJ was made aware of those material issues in employee's initial notice of appeal, and factual determinations were required for at least two of the four issues raised by employee. *Dupree v. D.C. Office of Empl. Appeals*, 36 A.3d 826, 2011 D.C. App. LEXIS 696 (2011).

In general.

District of Columbia employee's official position description did not require different and greater skills and training than the other special assistant positions in the Department of Public and Assisted Housing (DPAH) so as to justify separate competitive level, and not only was employee's competitive level constructed improperly, but the way in which it was established constituted error because employee was not released from his position in proper retention order since he was denied one round of competition, even though he was not the junior special assistant at the DPAH. *District of Columbia v. King*, 766 A.2d 38, 2001 D.C. App. LEXIS 24 (2001).

The Office of Employee Appeals (OEA) did not have authority to determine whether the reduction in force (RIF) at the Department of Public Works (DPW) was bona fide and whether the RIF violated a consent decree entered into between the Environmental Protection Agency (EPA) and the District. D.C. Code 1981, §§ 1-625.1 to 1-625.4. *Anjuwan v. District of Columbia Dep't of Pub. Works*, 729 A.2d 883, 1998 D.C. App. LEXIS 256 (1998).

The Office of Employee Appeals (OEA) does not have the authority to determine broadly whether an agency reduction in force (RIF) violates any law. D.C. Code 1981, §§ 1-625.1 to 1-625.4. *Anjuwan v. District of Columbia Dep't of Pub. Works*, 729 A.2d 883, 1998 D.C. App. LEXIS 256 (1998).

The authority of the Office of Employee Appeals (OEA) is to determine whether a reduction in force (RIF) complied with applicable District personnel statutes and regulations dealing with RIFs. D.C. Code 1981, §§ 1-625.1 to 1-625.4. *Anjuwan v. District of Columbia Dep't of Pub. Works*, 729 A.2d 883, 1998 D.C. App. LEXIS 256 (1998).

Former employee of the Department of Public Works (DPW) was not entitled to evidentiary hearing before the Office of Employee Appeals (OEA) on claim that DPW's reduction in force (RIF) was pretext for retaliation against employee for whistleblowing, where employee offered nothing in support of his claim. D.C. Code 1981, §§ 1-625.1 to 1-625.4. *Anjuwan v. District of Columbia Dep't of Pub. Works*, 729 A.2d 883, 1998 D.C. App. LEXIS 256 (1998).

Retiring employees.

Matter in which Department of Corrects em-

employee challenged his release under a mandated reduction in force (RIF) would be remanded to Office of Employee Appeals (OEA), which upheld the release, to determine whether three positions vacated by retiring employees, after RIF had been announced but before it was implemented, should be counted among positions abolished under RIF so as to place released employee higher on retention

register and, purportedly, not reachable for release; statute and regulations were silent on effect of retirements on RIF procedures, and OEA had not provided a reasoned administrative interpretation that could be reviewed by Court of Appeals. *Dupree v. D.C. Office of Empl. Appeals*, 36 A.3d 826, 2011 D.C. App. LEXIS 696 (2011).

§ 1-624.02. Procedures.

(a) Reduction-in-force procedures shall apply to the Career and Educational Services, except those persons separated pursuant to § 1-608.01a(b)(2), and to persons appointed to the Excepted and Legal Services as attorneys and shall include:

(1) A prescribed order of separation based on tenure of appointment, length of service including creditable federal and military service, District residency, veterans preference, and relative work performance;

(2) One round of lateral competition limited to positions within the employee's competitive level;

(3) Priority reemployment consideration for employees separated;

(4) Consideration of job sharing and reduced hours; and

(5) Employee appeal rights.

(b)(1) For purposes of this subchapter, a veterans preference eligibility will be defined in accordance with federal law and regulations issued by the U.S. Office of Personnel Management;

(2) Creditable service in determining length of service shall include all federal, District government, and military service otherwise creditable for Civil Service retirement purposes;

(3) Performance ratings documented and approved which recognize outstanding performance shall serve to increase the employee's service for reduction-in-force purposes by 4 years during the period the outstanding rating is in effect. Performance ratings may not be changed subsequent to the establishment of retention registers and issuance of reduction-in-force notices; and

(4) Employees serving on temporary limited appointments or having unacceptable performance ratings are not entitled to compete for retention.

(c) For purposes of this subchapter, each employee who is a bona fide resident of the District of Columbia shall have 3 years added to his or her creditable service for reduction-in-force purposes. For purposes of this subsection only, a nonresident District employee who was hired by the District government prior to January 1, 1980, and has not had a break in service since that date, or a former employee of the United States Department of Health and Human Services at Saint Elizabeths Hospital who accepted employment with the District government effective October 1, 1987, and has not had a break in service since that date, shall be considered a District resident.

(d) A reduction-in-force action may not be taken until the employee has been afforded at least 15 days advance notice of such an action. The notification

required by this subsection must be in writing and must include information pertaining to the employee's retention standing and appeal rights.

(e) Notwithstanding any other provision of law, the Board of Education shall not require or permit non-school-based personnel or school administrators to be assigned or reassigned to the same competitive level as classroom teachers.

(Mar. 3, 1979, D.C. Law 2-139, § 2402, 25 DCR 5740; Apr. 25, 1984, D.C. Law 5-79, § 2, 31 DCR 1230; Sept. 26, 1995, D.C. Law 11-52, § 1001(c), 42 DCR 3684; Mar. 5, 1996, D.C. Law 11-98, § 301(c), 43 DCR 5; Apr. 26, 1996, 110 Stat. 215, Pub. L. 104-134, § 145(3); Sept. 9, 1996, 110 Stat. 2372, Pub. L. 104-194, § 138(3); June 10, 1998, D.C. Law 12-124, § 101(x)(1), 45 DCR 2464; Apr. 20, 1999, D.C. Law 12-260, § 2(i), 46 DCR 1318; Mar. 20, 2008, D.C. Law 17-122, § 2(e), 55 DCR 1506.)

Section references. — This section is referred to in §§ 1-613.52 and 1-624.08.

Prior Codifications. — 1981 Ed., § 1-625.2.

1973 Ed., § 1-354.2.

Effect of amendments. — D.C. Law 17-122, in subsec. (a), substituted "Educational Service, except those persons separated pursuant to § 1-608.01a(b)(2), and" for "Educational Service and".

Temporary Amendment of Section. — Section 2 of D.C. Law 18-84, in subsec. (c), substituted "shall have 6 years added" for "shall have 3 years added".

Section 4(b) of D.C. Law 18-84 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 2(i) of the Legal Service Establishment Emergency Amendment Act of 1998 (D.C. Act 12-620, January 22, 1999, 46 DCR 1343).

For temporary (90 day) amendment of section, see § 2(e) of Public Education Personnel Reform Emergency Amendment Act of 2008 (D.C. Act 17-241, January 22, 2008, 55 DCR 983).

For temporary (90 day) amendment of section, see § 2 of District Residency RIF Protection Emergency Amendment Act of 2009 (D.C. Act 18-172, July 31, 2009, 56 DCR 6634).

For temporary (90 day) amendment of section, see § 2 of District Residency RIF Protection Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-228, October 27, 2009, 56 DCR 8705).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 5-79. — Law 5-79 was introduced in Council and assigned Bill No. 5-209, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on

January 31, 1984 and February 14, 1984, respectively. Signed by the Mayor on March 1, 1984, it was assigned Act No. 5-115 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following 1-623.10.

Legislative history of Law 11-78. — For legislative history of D.C. Law 11-78, see Historical and Statutory Notes following § 1-624.07.

Legislative history of Law 11-98. — For legislative history of D.C. Law 11-98, see Historical and Statutory Notes following § 1-624.07.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Legislative history of Law 12-260. — For legislative history of D.C. Law 12-260, see Historical and Statutory Notes following § 1-604.04.

Legislative history of Law 13-131. — For Law 13-131, see notes following § 1-614.51.

Legislative history of Law 17-122. — For Law 17-122, see notes following § 1-608.01a.

Editor's notes. — Furloughing of employees: See Mayor's Memorandum 89-10, February 17, 1989.

Applicability of § 101(x) of D.C. Law 12-124: See Historical and Statutory Notes following § 1-624.01.

Section 2(b) of D.C. Law 13-131 provided: "Sec. 2. Sections 1351(2) and 1352(3) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 are amended as follows:"

"(b) Section 1352(3) is amended to read as follows:

" '(3) Up to 5 rating levels, the highest of which shall constitute an outstanding performance rating for purposes of section 2402(b)(3) and the lowest of which shall constitute an

unacceptable performance rating for purposes of section 2402(b)(4);”.

CASE NOTES

ANALYSIS

Construction and application.
Hearings.
Reduction in force.
Retention register.

Construction and application.

District of Columbia employee's competitive level had to be based on his official position of record for purposes of reduction in force (RIF) action. *District of Columbia v. King*, 766 A.2d 38, 2001 D.C. App. LEXIS 24 (2001).

Fact that District of Columbia employee may have been detailed to a different position at the time of his reduction in force (RIF) does not change the fact that the establishment of the employee's competitive level is based on the official position description. *District of Columbia v. King*, 766 A.2d 38, 2001 D.C. App. LEXIS 24 (2001).

District of Columbia employee's official position description did not require different and greater skills and training than the other special assistant positions in the Department of Public and Assisted Housing (DPAH) so as to justify separate competitive level, and not only was employee's competitive level constructed improperly, but the way in which it was established constituted error because employee was not released from his position in proper retention order since he was denied one round of competition, even though he was not the junior special assistant at the DPAH. *District of Columbia v. King*, 766 A.2d 38, 2001 D.C. App. LEXIS 24 (2001).

Hearings.

ALJ abused his discretion in failing to conduct an evidentiary hearing on whether termination of a District of Columbia employee by Department of Corrections (DOC) due to a mandated reduction in force (RIF) complied with applicable regulations; documents submitted in response to employee's contentions obfuscated rather than clarified the material issues. ALJ was made aware of those material issues in employee's initial notice of appeal, and factual determinations were required for at least two of the four issues raised by employee. *Dupree v. D.C. Office of Empl. Appeals*, 36 A.3d 826, 2011 D.C. App. LEXIS 696 (2011).

Reduction in force.

Matter in which Department of Corrections employee challenged his release under a mandated reduction in force (RIF) would be remanded to Office of Employee Appeals (OEA),

which upheld the release, to determine whether three positions vacated by retiring employees, after RIF had been announced but before it was implemented, should be counted among positions abolished under RIF so as to place released employee higher on retention register and, purportedly, not reachable for release; statute and regulations were silent on effect of retirements on RIF procedures, and OEA had not provided a reasoned administrative interpretation that could be reviewed by Court of Appeals. *Dupree v. D.C. Office of Empl. Appeals*, 36 A.3d 826, 2011 D.C. App. LEXIS 696 (2011).

Criminal investigator who was released by Department of Corrections (DOC) as result of mandated reduction in force (RIF) could not be denied the benefit, in terms of his ranking on retention register, of an "outstanding" performance rating based on the failure of DOC to procure all the necessary approvals for that performance rating within the deadline for considering that rating to enhance investigator's ranking; delays in obtaining necessary approvals occurred by no fault of investigator and were attributable, in part, to three-month time frame in which special master was responding to DOC's request for a ruling on whether employee was entitled to benefit of "outstanding" rating. *Dupree v. D.C. Office of Empl. Appeals*, 36 A.3d 826, 2011 D.C. App. LEXIS 696 (2011).

Unions representing school district employees challenging reduction in force (RIF) conducted by District of Columbia Public Schools (DCPS) under Abolishment Act procedures had to present their claims in the first instance to the Office of Employee Appeals (OEA), rather than the Superior Court, though the unions claimed that they were asserting a stand-alone challenge to the RIF regulations, as rulemaking for an Abolishment Act RIF was not essential, given that all of the material RIF procedures were encompassed within the Abolishment Act, the critical question raised by the unions was whether DCPS correctly applied the statutory procedures governing an RIF under the Abolishment Act, and the OEA was the independent, specialized agency established to handle personnel-related employee appeals. *Wash. Teachers' Union, Local # 6 v. D.C. Pub. Sch.*, 960 A.2d 1123, 2008 D.C. App. LEXIS 476 (2008).

Retention register.

Two less senior criminal investigators with parenthetical title of "Internal Affairs" were properly excluded from the bottom of retention

register that was used as basis for releasing regular criminal investigator, based on his ranking in that register, in a mandated reduction in force (RIF); a separate retention register for the two less senior investigators was consis-

tent with applicable regulation in view of their parenthetical titles. *Dupree v. D.C. Office of Empl. Appeals*, 36 A.3d 826, 2011 D.C. App. LEXIS 696 (2011).

§ 1-624.03. Responsibility.

The appropriate personnel authority shall be responsible for making a final determination that a reduction in force is necessary and for ensuring that the provisions of this subchapter and rules and regulations issued pursuant to this subchapter are applied when effecting a reduction-in-force within their respective agency.

(Mar. 3, 1979, D.C. Law 2-139, § 2403, 25 DCR 5740; June 10, 1998, D.C. Law 12-124, § 101(x)(1), 45 DCR 2464.)

Prior Codifications. — 1981 Ed., § 1-625.3.

1973 Ed., § 1-354.3.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Editor's notes. — Applicability of § 101(x) of D.C. Law 12-124: See Historical and Statutory Notes following § 1-624.01.

§ 1-624.04. Appeals.

An employee who has received a specific notice that he or she has been identified for separation from his or her position through a reduction-in-force action may file an appeal with the Office of Employee Appeals if he or she believes that his or her agency has incorrectly applied the provisions of this subchapter or the rules and regulations issued pursuant to this subchapter. An appeal must be filed no later than 30 calendar days after the effective date of the action. The filing of an appeal shall not serve to delay the effective date of the action.

(Mar. 3, 1979, D.C. Law 2-139, § 2404, 25 DCR 5740; June 10, 1998, D.C. Law 12-124, § 101(x)(1), 45 DCR 2464; Sept. 30, 2004, D.C. Law 15-189, § 2(c), 51 DCR 6734.)

Prior Codifications. — 1981 Ed., § 1-625.4.

1973 Ed., § 1-354.4.

Effect of amendments. — D.C. Law 15-189 substituted "30" for "15".

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 9-47. — For legislative history of D.C. Law 9-47, see Historical and Statutory Notes following § 1-606.11.

Legislative history of Law 10-83. — Law 10-83, the "Comprehensive Merit Personnel Act Temporary Panel of the Office of Employee

Appeals Temporary Amendment Act of 1993," was introduced in Council and assigned Bill No. 10-430. The Bill was adopted on first and second readings on November 2, 1993, and December 7, 1993, respectively. Signed by the Mayor on December 16, 1993, it was assigned Act No. 10-157 and transmitted to both Houses of Congress for its review. D.C. Law 10-83 became effective on March 19, 1994.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Legislative history of Law 15-189. — For Law 15-189, see notes following § 1-606.01.

Editor's notes. — Applicability of § 101(x) of D.C. Law 12-124: See Historical and Statutory Notes following § 1-624.01.

CASE NOTES

In general.

Laid-off public school attendance officer failed to exhaust administrative remedies for denial of severance pay, where he did not appeal to the Office of Employee Appeals within 15 days of denial. *Fisher v. District of Columbia*, 803 A.2d 962, 2002 D.C. App. LEXIS 385 (2002).

General provisions of the Comprehensive Merit Personnel Act authorizing appeals from "adverse actions" and "grievances" do not permit university employees to appeal from dismissal resulting from reduction in force, in light of specific provisions excluding educational employees from subchapter granting employees right to appeal reduction in force. D.C. Code 1981, §§ 1-602.3(b), 1-617.1 et seq.,

1-617.1, 1-617.2, 1-625.1 et seq. *Davis v. University of Dist. of Columbia*, 603 A.2d 849, 1992 D.C. App. LEXIS 34 (1992).

"Reduction in force," for purposes of District of Columbia employee appeal rights, is reduction in personnel caused by lack of funding or discontinuance or curtailment of department, program, or function of agency; reduction in force, unlike "adverse action," has no role as punitive or corrective action and should leave no blemish on employee's records and, in contrast to "grievance," reduction in force is initiated by agency rather than employee. D.C. Code 1981, §§ 1-602.3(b), 1-617.1 et seq., 1-617.1, 1-617.2, 1-625.1 et seq. *Davis v. University of Dist. of Columbia*, 603 A.2d 849, 1992 D.C. App. LEXIS 34 (1992).

§ 1-624.05. [Reserved].

§ 1-624.06. Abolishment of positions for Fiscal Year 1996. [Repealed].

Repealed.

(Mar. 3, 1979, D.C. Law 2-139, § 2406, as added Jan. 26, 1996, D.C. Law 11-78, § 401(b), 42 DCR 6181; Mar. 5, 1996, D.C. Law 11-98, § 201(b), 43 DCR 5; Aug. 1, 1996, D.C. Law 11-152, § 501, 43 DCR 2978; Apr. 26, 1996, 110 Stat. 216, Pub. L. 104-134, § 149(b); June 10, 1998, D.C. Law 12-124, § 101(x)(2), 45 DCR 2464.)

Prior Codifications. — 1981 Ed., § 1-625.6.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Editor's notes. — Applicability of § 101(x) of D.C. Law 12-124: See Historical and Statutory Notes following § 1-624.01.

"Sec. 401. (a) Section 101(d), (k), (p), (s), and (x) of this act shall apply upon the enactment of legislation by the United States Congress that states the following:

"Notwithstanding any other law, section 101(d), (k), (p), (s), and (x) of the Omnibus Personnel Reform Amendment Act of 1998, effective June 10, 1998 (D.C. Law 12-124; 45 DCR 2464) are enacted into law."

Pub. L. 105-277, Div. C, Title I, § 134, Oct. 21, 1998, 112 Stat. 2681-596, provided: "Sec. 134. Notwithstanding any other law, sections 101(d), (k), (p), (s) and (x) of the Omnibus Personnel Reform Amendment Act of 1998, D.C. Law 12-124, effective June 11, 1998, are enacted into law."

§ 1-624.07. Abolishment of positions for Fiscal Year 1997. [Repealed].

Repealed.

(Mar. 3, 1979, D.C. Law 2-139, § 2407, as added Sept. 9, 1996, 110 Stat. 2372,

Pub. L. 104-194, § 140(b); Apr. 9, 1997, D.C. Law 11-200 § 2, 43 DCR 5427; Apr. 9, 1997, D.C. Law 11-255, § 57, 44 DCR 1271; June 10, 1998, D.C. Law 12-124, § 101(x)(2), 45 DCR 2464.)

Prior Codifications. — 1981 Ed., § 1-625.5.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Editor's notes. — Applicability of § 101(x) of D.C. Law 12-124: See Historical and Statutory Notes following § 1-624.01.

D.C. Law 12-124, Title IV, § 401(a), as amended by D.C. Law 12-264, § 60 (46 DCR 2118), eff. April 20, 1999, provided:

"Sec. 401. (a) Section 101(d), (k), (p), (s), and (x) of this act shall apply upon the enactment of

legislation by the United States Congress that states the following:

"Notwithstanding any other law, section 101(d), (k), (p), (s), and (x) of the Omnibus Personnel Reform Amendment Act of 1998, effective June 10, 1998 (D.C. Law 12-124; 45 DCR 2464) are enacted into law."

Pub. L. 105-277, Div. C, Title I, § 134, Oct. 21, 1998, 112 Stat. 2681-596, provided: "Sec. 134. Notwithstanding any other law, sections 101(d), (k), (p), (s) and (x) of the Omnibus Personnel Reform Amendment Act of 1998, D.C. Law 12-124, effective June 11, 1998, are enacted into law."

§ 1-624.08. Abolishment of positions for fiscal year 2000 and subsequent fiscal years.

(a) Notwithstanding any other provision of law, regulation, or collective bargaining agreement either in effect or to be negotiated while this legislation is in effect for the fiscal year ending September 30, 2000, and each subsequent fiscal year, each agency head is authorized, within the agency head's discretion, to identify positions for abolishment.

(b) Prior to February 1 of each fiscal year, each personnel authority (other than a personnel authority of an agency which is subject to a management reform plan under subtitle B of title XI of the Balanced Budget Act of 1997) shall make a final determination that a position within the personnel authority is to be abolished.

(c) Notwithstanding any rights or procedures established by any other provision of this subchapter, any District government employee, regardless of date of hire, who encumbers a position identified for abolishment shall be separated without competition or assignment rights, except as provided in this section.

(d) An employee affected by the abolishment of a position pursuant to this section who, but for this section would be entitled to compete for retention, shall be entitled to one round of lateral competition pursuant to Chapter 24 of the District of Columbia Personnel Manual, which shall be limited to positions in the employee's competitive level.

(e) Each employee selected for separation pursuant to this section shall be given written notice of at least 30 days before the effective date of his or her separation.

(f) Neither the establishment of a competitive area smaller than an agency, nor the determination that a specific position is to be abolished, nor separation pursuant to this section shall be subject to review except that:

(1) An employee may file a complaint contesting a determination or a separation pursuant to subchapter XV of this chapter or § 2-1403.03; and

(2) An employee may file with the Office of Employee Appeals an appeal

contesting that the separation procedures of subsections (d) and (e) were not properly applied.

(g) An employee separated pursuant to this section shall be entitled to severance pay in accordance with subchapter XI of this chapter, except that the following shall be included in computing creditable service for severance pay for employees separated pursuant to this section:

(1) Four years for an employee who qualified for veterans preference under this chapter, and

(2) Three years for an employee who qualified for residency preference under this chapter.

(h) Separation pursuant to this section shall not affect an employee's rights under either the Agency Reemployment Priority Program or the Displaced Employee Program established pursuant to Chapter 24 of the District Personnel Manual.

(i) With respect to agencies which are not subject to a management reform plan under subtitle B of title XI of the Balanced Budget Act of 1997, the Mayor shall submit to the Council a listing of all positions to be abolished by agency and responsibility center by March 1 of each fiscal year or upon the delivery of termination notices to individual employees.

(j) Notwithstanding the provisions of § 1-617.08 or § 1-624.02(d), the provisions of this chapter shall not be deemed negotiable.

(k) A personnel authority shall cause a 30-day termination notice to be served, no later than September 1 of each fiscal year, on any incumbent employee remaining in any position identified to be abolished pursuant to subsection (b) of this section.

(l) In the case of an agency which is subject to a management reform plan under subtitle B of title XI of the Balanced Budget Act of 1997, the authority provided by this section shall be exercised to carry out the agency's management reform plan, and this section shall otherwise be implemented solely in a manner consistent with such plan.

(Mar. 3, 1979, D.C. Law 2-139, § 2408, as added Nov. 19, 1997, 111 Stat. 2181, Pub. L. 105-100, § 150(d); Oct. 21, 1998, 112 Stat. 2681-144, Pub. L. 105-277, § 144(b); Nov. 29, 1999, 113 Stat. 1522, Pub. L. 106-113, § 140(b); Nov. 22, 2000, 114 Stat. 2440, Pub. L. 106-522, § 129(b); Apr. 12, 2000, D.C. Law 13-91, § 107, 47 DCR 520; Apr. 7, 2006, D.C. Law 16-91, § 123, 52 DCR 10637.)

Prior Codifications. — 1981 Ed., § 1-625.7.

Effect of amendments. — Public Law 106-113, in subssecs. (a), (b), (i), and (k), substituted "2000" for "1999".

Public Law 106-522, in subsec. (a), substituted "September 30, 2000, and each subsequent fiscal year" for "September 30, 2000,"; in subsec. (b), substituted "February 1 of each year" for "February 1, 2000"; in subsec. (i), substituted "March 1 of each year" for "March 1, 2000"; and in subsec. (k), substituted "September 1 of each year" for "September 1, 2000".

D.C. Law 13-91 validated a previously made technical amendment in the heading.

D.C. Law 16-91, in the section heading and par. (b), validated previously made technical corrections.

Temporary Addition of Section. — Section 2 of D.C. Law 18-216 required the Office of the Chief Financial Officer to submit to the Council a written determination on whether the District of Columbia Public Schools had a surplus in its fiscal year 2010 budget and if certain conditions were met, to require the District of Columbia Public Schools to take other actions.

Section 4(b) of D.C. Law 18-216 provides that the act shall expire after 225 days of its having taken effect

Emergency legislation. — For temporary (90 day) addition, see § 2 of District of Columbia Public Schools Teacher Reinstatement Emergency Act of 2010 (D.C. Act 18-425, May 26, 2010, 57 DCR 4773).

For temporary (90 day) addition of section, see § 2 of District of Columbia Public Schools Teacher Reinstatement Congressional Review Emergency Act of 2010 (D.C. Act 18-456, July 7, 2010, 57 DCR 6050).

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-602.03.

Legislative history of Law 16-91. — For Law 16-91, see notes following § 1-301.45.

References in text. — Subtitle B of Title XI of the Balanced Budget Act of 1997 is subtitle B of Title XI of Pub. L. 105-33, 111 Stat. 731.

Construction of Law 12-124. — Section 301 of D.C. Law 12-124 provided that: “Nothing in this act shall be construed as superseding the provisions of the National Capital Revitalization and Self-Government Improvement Act of 1997, approved August 5, 1997 (P.L. 105-33; 111 Stat. 712), except that section 11105(b)(3) of the Act is expressly superseded. Further, nothing in this act shall be construed as superseding the provisions of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, approved April 17, 1995 (109 Stat. 97, D.C. Code § 47-391.01 et seq.) or of section 164 of the District of Columbia Appropriations Act, 1998, approved November 19, 1997 (Public Law 105-100; 111 Stat. 2160).”

CASE NOTES

In general.

Abolishment Act procedures governed reduction in force (RIF) by District of Columbia Public Schools (DCPS), rather than regular RIF procedures, where the resolution authorized the RIF in question to ensure balanced budgets rather than deficits, and addressed a

longstanding structural budgetary problem traceable to declining enrollment of pupils and the administrative impact of that decline. Wash. Teachers’ Union, Local # 6 v. D.C. Pub. Sch., 960 A.2d 1123, 2008 D.C. App. LEXIS 476 (2008).

§ 1-624.09. Severance pay.

(a) An employee separated pursuant to this subchapter shall be entitled to severance pay in accordance with subchapter XI of this chapter, except as provided in this section.

(b) Additional service credit shall be applied as follows:

- (1) Four years for an employee who qualifies for veterans preference; and
- (2) Three years for an employee who qualifies for District residency preference.

(c) The total severance pay received over an employee’s career in the District government shall not exceed 26 weeks of pay at the rate received immediately before separation.

(Mar. 3, 1979, D.C. Law 2-139, § 2409, as added June 10, 1998, D.C. Law 12-124, § 101(x)(3), 45 DCR 2464; Apr. 12, 2000, D.C. Law 13-91, §§ 108(c), 109(e), 47 DCR 520.)

Prior Codifications. — 1981 Ed., § 1-625.8.

Effect of amendments. — D.C. Law 13-91 designated the former introductory paragraph as subsec. (a), and redesignated former par. (1) as subsec. (b), former subpar. (1)(A) as par. (b)(1), former subpar. (1)(B) as par. (b)(2), and former par. (2) as subsec. (c).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2 of the Mental Retardation and Developmental Disabilities Administration Voluntary Severance

Incentive Plan Emergency Act of 2000 (D.C. Act 13-548, January 11, 2001, 48 DCR 774).

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 1-602.03.

Construction of Law 12-124. — Section 301 of D.C. Law 12-124 provided that nothing in the act shall be construed as superseding the provisions of the National Capital Revitaliza-

tion and Self-Government Improvement Act of 1997, approved August 5, 1997 (Public Law 105-33; 111 Stat. 712), except that § 47-395.04(b)(3) is expressly superseded. Further, nothing in the act shall be construed as superseding the provisions of § 47-391.01 et seq. or of § 164 of the District of Columbia Appropriations Act, 1998, approved November 19, 1997 (Public Law 105-100; 111 Stat. 2160).

Editor's notes. — Applicability of § 101(x) of D.C. Law 12-124: Section 401(a) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(d), (k), (p), (s), and (x)

of this act shall apply upon the enactment of legislation by the United States Congress that states the following: "Notwithstanding any other law, section 101(d), (k), (p), (s), and (x) of the Omnibus Personnel Reform Act of 1998, adopted by the Council of the District of Columbia is enacted into law." Section 134 of Title I of Division C of Pub. L. 105-277, 112 Stat. 2681-596, provided that "Notwithstanding any other law, sections 101(d), (k), (p), (s), and (x) of the Omnibus Personnel Reform Amendment Act of 1998, D.C. Law 12-124, effective June 11, 1998, are enacted into law."

CASE NOTES

In general.

Laid-off public school attendance officer failed to exhaust administrative remedies for denial of severance pay, where he did not appeal to the Office of Employee Appeals within 15 days of denial. *Fisher v. District of Columbia*, 803 A.2d 962, 2002 D.C. App. LEXIS 385 (2002).

Laid-off public school attendance officer could not appeal to the Superior Court the denial of his request for severance pay, under the Comprehensive Merit Personnel Act, where he did not bring his appeal within 30 days. *Fisher v. District of Columbia*, 803 A.2d 962, 2002 D.C. App. LEXIS 385 (2002).

Subchapter XXIV-A. Transition Benefits for Displaced Employees.

§ 1-624.21. Outplacement services for displaced employees in Fiscal Year 1996.

The outplacement services provided by the Mayor to employees displaced during Fiscal Year 1996 shall include provisions for the following:

- (1) Counseling services for stress and finance management;
- (2) Access to automated job information services;
- (3) Job fairs;
- (4) Coordination of training and job banks with the D.C. Chamber of Commerce, Business Coalition, and labor organizations;
- (5) Consulting with regional governments concerning job vacancies and job banks;
- (6) Workshops on writing resumes; and
- (7) Access to facsimile and copying machines, computers, typewriters, and telephones where local calls can be made to prospective employers.

(Mar. 3, 1979, D.C. Law 2-139, § 2421, as added Mar. 5, 1996, D.C. Law 11-98, § 601, 43 DCR 5.)

Prior Codifications. — 1981 Ed., § 1-625A.1.

Legislative history of Law 11-78. — Law 11-78, the "Budget Support Temporary Act of 1995," was introduced in Council and assigned Bill No. 11-421. The Bill was adopted on first and second readings on July 29, 1995, and October 10, 1995, respectively. Signed by the

Mayor on October 31, 1995, it was assigned Act No. 11-150 and transmitted to both Houses of Congress for its review. D.C. Law 11-78 became effective on January 26, 1996.

Legislative history of Law 11-98. — Law 11-98, the "Budget Support Temporary Act of 1995," was introduced in Council and assigned Bill No. 11-440, which was referred to the

Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1995, and December 5, 1995, respectively. Signed by the Mayor on December 26, 1995, it

was assigned Act No. 11-181 and transmitted to both Houses of Congress for its review. D.C. Law 11-98 became effective on March 5, 1996.

§ 1-624.22. Transition benefits for displaced employees in Fiscal Year 1996.

(a) This section shall apply only to employees displaced as a result of a reduction-in-force in Fiscal Year 1996.

(b) Any employee who is displaced as a result of the reduction-in-force procedure in Fiscal Year 1996 may be eligible for, to the extent there are Fiscal Year 1996 appropriations, the following:

(1) Continuation of health insurance benefits and premium contribution at the same rate as the employee had been subsidized by the District while an active employee for 2 months after separation or upon the commencement of new employment, whichever occurs first;

(2) Child care vouchers in the amount of \$75 per week payable to a licensed day care provider for each week the displaced employee is certified to be unemployed for the 6-month period following separation or through the end of the first week when the displaced employee is no longer unemployed, whichever occurs first; and

(3) Tuition assistance to attend any vocational training or GED program not to exceed one-half the yearly cost for any full-time District resident student at UDC.

(c) The benefits contained in subsection (b) of this section are subject to the following limitations:

(1) The displaced employee must be a bona fide District resident at the time of separation and must have filed a District of Columbia income tax return in the 2 years prior to separation;

(2) The continued coverage under subsection (b)(1) and (2) of this section for District employees enrolled in the Federal Employee Health Benefits Plan and Federal Employees Group Life Insurance Plan are subject to the federal regulations governing these benefits;

(3) The employee must not have been the recipient of the early out or easy out retirement incentive or voluntary severance incentive programs in Fiscal Year 1996;

(4) The limit of the Fiscal Year 1996 appropriations for this program;

(5) The employee cannot have been offered a position with a contractor for government services under § 2-301.15b(a), and refused such offer of employment;

(6) Nothing in subsection (b) of this section shall be construed as an entitlement to any benefits; and

(7) No benefits set forth in subsection (b) of this section shall be available in any future Fiscal Year without additional appropriations for those benefits.

(Mar. 3, 1979, D.C. Law 2-139, § 2422, as added Mar. 5, 1996, D.C. Law 11-98, § 601, 43 DCR 5.)

Prior Codifications. — 1981 Ed., § 1-625A.2.

Legislative history of Law 11-78. — For legislative history of D.C. Law 11-78, see Historical and Statutory Notes following § 1-624.21.

Legislative history of Law 11-98. — For legislative history of D.C. Law 11-98, see Historical and Statutory Notes following § 1-624.21.

§ 1-624.23. Administration of subchapter.

The Department of Employment Services shall have responsibility for the administration of this subchapter.

(Mar. 3, 1979, D.C. Law 2-139, § 2423, as added Mar. 5, 1996, D.C. Law 11-98, § 601, 43 DCR 5.)

Prior Codifications. — 1981 Ed., § 1-625A.3.

Legislative history of Law 11-78. — For legislative history of D.C. Law 11-78, see Historical and Statutory Notes following § 1-624.21.

Legislative history of Law 11-98. — For legislative history of D.C. Law 11-98, see Historical and Statutory Notes following § 1-624.21.

§ 1-624.24. Reports.

The Department of Employment Services shall submit quarterly reports, until January 1, 1997, on the effectiveness of outplacement services.

(Mar. 3, 1979, D.C. Law 2-139, § 2424, as added Mar. 5, 1996, D.C. Law 11-98, § 601, 43 DCR 5.)

Cross references. — Merit system, effective date provisions, see § 1-636.02.

Prior Codifications. — 1981 Ed., § 1-625A.4.

Legislative history of Law 11-78. — For legislative history of D.C. Law 11-78, see His-

torical and Statutory Notes following § 1-624.01.

Legislative history of Law 11-98. — For legislative history of D.C. Law 11-98, see Historical and Statutory Notes following § 1-624.01.

Subchapter XXV. Political Rights of Employees.

§ 1-625.01. Hatch Act retention.

The provisions of subchapter III of Chapter 73 of Title 5 of the United States Code, affecting political activities of employees of the District of Columbia, shall remain effective.

(Mar. 3, 1979, D.C. Law 2-139, § 2512, 25 DCR 5740, renumbered § 2501, Aug. 1, 1979, D.C. Law 3-14, § 2(c), 25 DCR 10565.)

Section references. — This section is referred to in § 1-636.02.

Prior Codifications. — 1981 Ed., § 1-626.1.

1973 Ed., § 1-355.1.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see His-

torical and Statutory Notes following § 1-601.01.

Editor's notes. — Section 8(a) of D.C. Law 18-335, codified as § 1-1171.01(a), provided that Law 18-335 shall apply upon enactment by the Congress of an act excluding the District of Columbia from coverage of 5 U.S.C.

§§ 7321 through 7326 (Hatch Act).

Section 8(b) of D.C. Law 18-335 codified as § 1-1171.01(b), provided that this act shall apply upon inclusion of its fiscal effect in an approved budget and financial plan.

Congress enacted and the President signed Public Law 112-230 on December 28, 2012, excluding the District of Columbia from the coverage of 5 U.S.C. §§ 7321 through 7326 (Hatch Act).

§ 1-625.02. Protection of political rights of classroom teachers.

No provision of this subchapter shall be construed to limit the rights of classroom teachers to freely express political opinions.

(Mar. 3, 1979, D.C. Law 2-139, § 2513, 25 DCR 5740, renumbered § 2502, Aug. 1, 1979, D.C. Law 3-14, § 2(c), 25 DCR 10565.)

Cross references. — National Capital Revitalization Corporation, health, life and retirement benefit plans for officers and employees, see § 1-1219.05.

Spouse equity, retirement benefits, see § 1-529.01 et seq.

Section references. — This section is referred to in § 1-636.02.

Prior Codifications. — 1981 Ed., § 1-626.2.

1973 Ed., § 1-355.2.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Subchapter XXVI. Retirement.

§ 1-626.01. Policy.

(a) It is the purpose of this subchapter to establish a financially sound and equitable program of employee retirement benefits. With respect to retirement systems, the Council recognizes that existing programs, including the program administered by the federal government, are not now financed on an actuarially sound basis. Furthermore, the rights and benefits conferred by these systems and the financial implications for participation by employees vary significantly among systems.

(b) The responsibility for creating an actuarially sound financial plan for existing retirement systems cannot and should not be borne solely by the District government. The Council therefore fully endorses the proposition that the federal government must assist the District government in establishing and maintain the necessary financial base for all existing retirement systems.

(Mar. 3, 1979, D.C. Law 2-139, § 2601, 25 DCR 5740.)

Section references. — This subchapter is referred to in § 2-1219.05.

Prior Codifications. — 1981 Ed., § 1-627.1.

1973 Ed., § 1-356.1.

Temporary Addition of Section. — Sections 2 to 7 of D.C. Law 17-171 added sections to read as follows:

“Sec. 2. Easy out retirement incentive.

“(a) Notwithstanding section 1106 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3,

1979 (D.C. Law 2-139; D.C. Official Code § 1-611.06) (‘CMPA’), the Council adopts changes to the compensation system for the Career, Excepted, Legal, and Management Supervisory Services under section 1104 of the CMPA, that authorize the Mayor to establish a retirement incentive program for certain District employees.

“(b) The changes to the compensation system are as follows:

“(1) The Mayor is authorized to establish an easy out retirement incentive program (‘Easy

Out Program') which may apply to eligible employees under the personnel authority of the Mayor, and employees of any other personnel authority that is under the pay authority of the Mayor if the personnel authority chooses to participate in the Easy Out Program.

"(2) The Easy Out Program may be implemented by the appropriate personnel authority at any time during calendar year 2008 after the effective date of this act.

"(3) The Easy Out Program shall be limited to employees retiring under the retirement provisions of the Civil Service Retirement System (Chapter 83 of Title 5 of the U.S. Code), except an employee retiring under the discontinued service/involuntary retirement provisions of 5 U.S.C. § 8336(d)(1) or under the disability retirement provisions of 5 U.S.C. § 8337.

"(4) The Easy Out Program shall offer a retirement incentive of 50% of an employee's annual rate of basic pay from the employee's salary or pay schedule which was in effect on October 14, 2007, not to exceed \$25,000.

"(5) Retirement incentive payments shall be prorated in the case of a part-time employee.

"(6) Retirement incentive payments shall not be considered basic pay for computing retirement entitlement, insurance entitlement, any category of premium pay entitlement, lump-sum leave, or any other entitlement that is computed on basic pay.

"(7) No incentive pay shall be paid to:

"(A) An employee retiring under the discontinued service/involuntary retirement provisions of 5 U.S.C. § 8336(d)(1) or the disability retirement provisions of 5 U.S.C. § 8337;

"(B) An employee who is a reemployed annuitant under the provisions of 5 U.S.C. § 8344;

"(C) An employee who is in a critical position as defined by regulations promulgated by the Mayor;

"(D) An employee who is under indictment or who is charged by information with or who has been convicted of a felony or who has been convicted after a plea of nolo contendere to a felony related to his or her employment duties; provided, that any employee who ultimately is acquitted or cleared of any charge that caused his or her ineligibility shall be eligible for all benefits as if that employee had never been indicted for or charged by information with a felony;

"(E) An employee who, based on conduct related to his or her employment duties, has been convicted of a misdemeanor or who has plead guilty or has been convicted after a plea of nolo contendere to a misdemeanor; provided, that any employee who is ultimately acquitted or cleared of any charge which caused his or her ineligibility shall be eligible for all benefits as if that employee had never been charged with a misdemeanor; or

"(F) An employee who is a sworn member of the Metropolitan Police Department or the Fire and Emergency Medical Services Department.

"(8) For the purposes of paragraph (7)(D) of this subsection, the term "felony" means an offense that is punishable by a term of imprisonment that exceeds one year or a fine of at least \$1,000.

"(9) An employee who receives an incentive payment under the Easy Out Program shall not be eligible for reemployment with the District government for 5 years from the date of retirement, or hired or retained as a sole source consultant or personal services contractor for 5 years from the date of retirement, unless he or she repays the incentive received if reemployed or hired or retained as a sole source consultant or personal services contractor before the end of the 5-year period.

"(10) Notwithstanding the provisions of paragraph (9) of this subsection, and on a case-by-case basis, the Director of the D.C. Department of Human Resources or independent personnel authority may waive repayment of the incentive; provided, that in the case of an emergency situation involving a direct threat to life or property, the person has knowledge, skills, or abilities directly related to resolving the emergency situation and will serve on a temporary basis not to exceed 60 days.

"Sec. 3. Early out retirement incentive.

"(a) Notwithstanding section 1106 of the CMPA, the Council adopts changes to the compensation system for the Career, Excepted, Legal, and Management Supervisory Services under section 1104 of the CMPA that authorize the Mayor to establish a retirement incentive program for certain District employees.

"(b) The changes to the compensation system are as follows:

"(1) The Mayor is authorized to establish an early out retirement incentive program ('Early Out Program') which may apply to eligible employees under the personnel authority of the Mayor and employees of any other personnel authority that is under the pay authority of the Mayor if the personnel authority chooses to participate in the Early Out Program.

"(2) The Early Out Program may be implemented by the appropriate personnel authority at any time during calendar year 2008 after the effective date of this act.

"(3) The Early Out Program shall be limited to employees retiring under the early retirement provisions of 5 U.S.C. § 8414(b)(1)(B).

"(4) The Early Out Program shall offer a retirement incentive of 50% of an employee's annual rate of basic pay from the employee's salary or pay schedule which was in effect on October 14, 2007, not to exceed \$25,000.

"(5) Retirement incentive payments shall be prorated in the case of a part-time employee.

"(6) Retirement incentive payments shall not be considered basic pay for computing retirement entitlement, insurance entitlement, any category of premium pay entitlement, lump-sum leave, or any other entitlement that is computed on basic pay.

"(7) No retirement incentive pay shall be paid under this section to:

"(A) An employee retiring under the law enforcement or firefighter provisions of 5 U.S.C. § 8336(c), the discontinued service/involuntary retirement provisions of 5 U.S.C. § 8336 (d)(1), or the disability retirement provisions of 5 U.S.C. § 8337;

"(B) An employee who is a reemployed annuitant under the provisions of 5 U.S.C. § 8344;

"(C) An employee who is in a critical position as defined by regulations promulgated by the Mayor;

"(D) An employee who is under the indictment or who is charged by information with or who has been convicted of a felony or who has been convicted after a plea of nolo contendere to a felony related to his or her employment duties; provided, that any employee who ultimately is acquitted or cleared of any charge that cause his or her ineligibility shall be eligible for all benefits as if that employee had never been indicted for or charged by information with a felony;

"(E) An employee who, based on conduct related to his or her employment duties, has been convicted of a misdemeanor or who has plead guilty or has been convicted after a plea of nolo contendere to a misdemeanor; provided, that any employee who is ultimately acquitted or cleared of any charge which caused his or her ineligibility shall be eligible for all benefits as if that employee had never been charged with a misdemeanor; or

"(F) An employee who is a sworn member of the Metropolitan Police Department or the Fire and Emergency Medical Services Department.

"(8) For the purposes of paragraph (7)(D) of this subsection, the term "felony means an offense that is punishable by a term of imprisonment that exceeds one year or a fine of at least \$1,000.

"(9) An employee who receives an incentive payment under the Early Out Program shall not be eligible for reemployment with the District government for 5 years from the date of retirement, or hired or retained as a sole source consultant or personal services contractor for 5 years from the date of retirement, unless he or she repays the incentive if reemployed or rehired or retained as a sole source consultant or personal services contractor before the end of the 5-year period.

"(10) Notwithstanding the provisions of paragraph (9) of this subsection, and on a case-by-case basis, the Director of the D.C. Department of Human Resources or independent personnel

authority may waive repayment of the incentive; provided, that in the case of an emergency situation involving a direct threat to life or property, the person has knowledge, skills, or abilities directly related to the resolving the emergency situation and will serve on a temporary basis not to exceed 60 days.

"Sec. 4. Retirement incentives for employees covered under other retirement systems.

"(a) Notwithstanding section 1106 of the CMPA (D.C. Official Code § 1-611.06), the Council of the District of Columbia adopts changes to the compensation system for the Career, Excepted, Legal, and Management Supervisory Services under section 1104 of the CMPA that authorize the Mayor to establish a retirement incentive program for the following employees:

"(1) Employees first employed by the District government after September 30, 1987 who have completed at least 5 years of creditable service with the District government, have vested under the Defined Contribution Plan as provided in section 2610 of the CMPA, and are separating from District government service after becoming entitled to retirement benefits under the Social Security Act; and

"(2) Employees retiring under any of the other District government retirement systems.

"(b) Retirement incentives under this section may be implemented by the appropriate personnel authority at any time during calendar year 2008 after the effective date of this act.

"(c) Retirement incentives under this section shall consist of 50% of an employee's annual rate of basic pay from the employee's salary or pay schedule which was in effect on October 14, 2007, not to exceed \$25,000.

"(d) Retirement incentive payments shall be prorated in the case of a part-time employee.

"(e) Retirement incentive payments shall not be considered basic pay for computing retirement entitlement, insurance entitlement, any category of premium pay entitlement, lump-sum leave, or any other entitlement that is computed on basic pay.

"(f) No retirement incentive under this section shall be paid to:

"(1) An employee who is in a critical position as defined by regulations promulgated by the Mayor;

"(2) An employee who is under the indictment or who is charged by information with or who has been convicted of a felony or who has been convicted after a plea of nolo contendere to a felony related to his or her employment duties; provided, that any employee who ultimately is acquitted or cleared of any charge that cause his or her ineligibility shall be eligible for all benefits as if that employee had never been indicted for or charged by information with a felony;

"(3) An employee who, based on conduct related to his or her employment duties, has been convicted of a misdemeanor or who has plead guilty or has been convicted after a plea of nolo contendere to a misdemeanor; provided, that any employee who is ultimately acquitted or cleared of any charge which caused his or her ineligibility shall be eligible for all benefits as if that employee had never been charged with a misdemeanor; or

"(4) An employee who is a sworn member of the Metropolitan Police Department or the Fire and Emergency Medical Services Department.

"(g) For the purposes of paragraph (f)(2) of this section, the term 'felony' means an offense that is punishable by a term of imprisonment that exceeds one year or a fine of at least \$1,000.

"(h) An employee who receives an incentive payment under this section shall not be eligible for reemployment with the District government for 5 years from the date of retirement, or hired or retained as a sole source consultant or personal services contractor for 5 years from the date of retirement, unless he or she repays the incentive if reemployed or rehired or retained as a sole source consultant or personal services contractor before the end of the 5-year period.

"(i) Notwithstanding the provisions of subsection (h) of this section, and on a case-by-case basis, the Director of the D.C. Department of Human Resources or independent personnel authority may waive repayment of the incentive; provided, that in the case of an emergency situation involving a direct threat to life or property, the person has knowledge, skills, or abilities directly related to the resolving the emergency situation and will serve on a temporary basis not to exceed 60 days.

"Sec. 5. Retention award.

"The Mayor shall issue rules to create and implement a Retention Award for Sustained Superior Performance for up to \$25,000 for the remainder of the calendar year 2008.

"Sec. 6. Not an entitlement or private right of action.

"No provision of this act shall be construed to create an entitlement or private right of action on the part of any District government employee with respect to the easy out retirement incentive or early out retirement incentive.

"Sec. 7. Rules.

"The Mayor shall issue rules to implement the provisions of sections 2, 3, 4, and 5."

Section 9(b) of D.C. Law 17-171 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For early out and easy out retirement incentive programs during Fiscal Year 2000, see §§ 2 and 3 of the

Retirement Incentive Emergency Act of 1999 (D.C. Act 13-349, June 5, 2000, 47 DCR 5014).

For temporary (90 day) amendment of section, see § 2 of the Snow and Ice Control Program Emergency Act of 2000 (D.C. Act 13-475, November 22, 2000, 47 DCR 9649).

For temporary (90 day) addition, see § 4 of Public Education Personnel Reform Emergency Amendment Act of 2008 (D.C. Act 17-241, January 22, 2008, 55 DCR 983).

For temporary (90 day) additions, see §§ 2 to 7 of Retirement Incentive Emergency Act of 2008 (D.C. Act 17-321, March 20, 2008, 55 DCR 3439).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 13-222. — Law 13-222, the "Snow and Ice Control Program Temporary Act of 2000", was introduced in Council and assigned Bill No. 13-869. The Bill was adopted on first and second readings on October 17, 2000, and November 8, 2000, respectively. Signed by the Mayor on November 29, 2000, it was assigned Act No. 13-481 and transmitted to both Houses of Congress for its review. D.C. Law 13-222 became effective on April 3, 2001.

Editor's notes. — Retirement incentive program by Board of Education: For authorization for the Board of Education to establish a temporary retirement incentive program and contained provisions regarding participation in the program, see subchapter III of chapter 20 of Title 38, § 38-2041.01 et seq.

Section 2 of D.C. Law 13-222 provided:

"(a) Notwithstanding sections 2(b)(9) and 3(b)(9) of the Retirement Incentive Emergency Act of 2000 and the Retirement Incentive Temporary Act of 2000 ('Retirement Incentive Acts'), a former employee who received an incentive payment under the Easy Out or Early Out Programs in sections 2 and 3 of the Retirement Incentive Acts may be retained as a personal services contractor within 5 years from the date of retirement, if the former employee:

"(1) Possesses a valid commercial drivers' license or motor vehicle operator's license;

"(2) Is retained by the Department of Public Works as a motor vehicle operator in the snow and ice control program for the winter of 2000-2001; and

"(3) Is deemed critical by the Mayor to the snow and ice control program.

"(b) The Mayor shall transmit a report to the Council indicating the qualified applicants for the positions."

Section 4(b) of D.C. Law 13-222 provided that the act shall expire after 225 days of its having taken effect.

§ 1-626.02. Retirement systems.

Existing retirement systems, which include the Civil Service Retirement System (Chapter 83 of Title 5 of the United States Code), Teachers' Retirement System, Police and Fire Retirement System, Teachers' Insurance and Annuity Association programs, and the Judges' Retirement System, shall continue to be applicable to all employees except that the Civil Service Retirement System pursuant to 5 U.S.C. § 8331 shall not be applicable to employees first employed after September 30, 1987.

(Mar. 3, 1979, D.C. Law 2-139, § 2602, 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(ee), 27 DCR 2632; Oct. 1, 1987, D.C. Law 7-27, § 2(f), 34 DCR 5079; Apr. 30, 1988, D.C. Law 7-104, § 10(a), 35 DCR 147.)

Prior Codifications. — 1981 Ed., § 1-627.2.

1973 Ed., § 1-356.2.

Emergency legislation. — Section 5 of D.C. Law 11-218 repealed D.C. Act 11-369.

For temporary repeal of the Police Officers', Fire Fighters', and Teachers' Defined Benefit Pension Program Emergency Establishment Act of 1996 (D.C. Act 11-369, August 21, 1996, 41 DCR 4637), see § 5 of the New Hires Police Officers, Fire Fighters, and Teachers Pension Modification Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-10, March 3, 1997, 44 DCR 1633).

For temporary (90-day) amendment of section, see §§ 702 and 802 of the Service Improvement and Fiscal Year 2000 Budget Support Emergency Act of 1999 (D.C. Act 13-110, July 28, 1999, 46 DCR 6320).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 3-81. — For legislative history of D.C. Law 3-81, see Historical and Statutory Notes following § 1-602.02.

Legislative history of Law 7-27. — For legislative history of D.C. Law 7-27, see Historical and Statutory Notes following § 1-621.02.

Legislative history of Law 7-104. — For legislative history of D.C. Law 7-104, see Historical and Statutory Notes following § 1-604.08.

Legislative history of Law 11-218. — Law 11-218, the "New Hires Police Officers, Fire Fighters, and Teachers Pension Modification Amendment Act," was introduced in council and assigned Bill No. 11-316, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on July 3, 1996, and October 1, 1996, respectively. Signed by the Mayor on October 18, 1996, it was assigned Act No. 11-432 and transmitted to both Houses of Congress for its review. D.C. Law 11-218 became effective April 9, 1997.

Mayor's Orders. — Establishment of Pension Benefit Committee: See Mayor's Order 89-235, October 5, 1989.

Editor's notes. — Retirement incentive eligibility: Section 101 of D.C. Law 11-98 requires the Mayor to identify and submit to the Council a list of which positions can be made eligible for certain retirement incentive programs.

Fiscal Year 1995 Spending Reduction Approval Emergency Resolution of 1995: Pursuant to Resolution 11-21, effective February 7, 1995, the Council approved, on an emergency basis, changes to the Career and Excepted Service compensation system to authorize the Mayor to extend the retirement incentive program for certain District government employees.

Sections 702 and 802 of D.C. Law 13-38 provided:

"Sec. 702. Early out retirement incentive.

"(a) Notwithstanding section 1106 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Code § 1-612.6), the Council of the District of Columbia adopts changes to the Career and Excepted Service compensation system under section 1104 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Code § 1-612.4), that authorize the Mayor to establish a retirement incentive program for certain District employees.

"(b) The changes to the compensation system are as follows: (1) The Mayor is authorized to establish an early out retirement incentive program ('Early Out Program') which shall apply to eligible employees under the personnel authority of the Mayor, and employees of any other personnel authority that is under the pay authority of the Mayor if the personnel authority chooses to participate in the Early Out Program.

"(2) The Early Out Program shall be effective for 120 days after the effective date of this act.

"(3) The Early Out Program shall be limited to employees retiring under the voluntary early out provisions of 5 U.S.C. § 8336(d)(2).

"(4) The Early Out Program shall offer a retirement incentive of 50% of an employee's annual rate of basic pay from the employee's salary or pay schedule which was in effect on October 1, 1999, not to exceed \$30,000, to be paid within 1 year of the employee's retirement.

"(5) Retirement incentive payments shall be prorated in the case of a part-time employee.

"(6) Retirement incentive payments shall not be considered basic pay for computing retirement entitlement, insurance entitlement, any category of premium pay entitlement, lump-sum leave, or any other entitlement that is computed on basic pay.

"(7) No incentive payments shall be paid to: (A) An employee retiring under the law enforcement or firefighter provisions of 5 U.S.C. § 8336(c), the discontinued service/involuntary retirement provisions of 5 U.S.C. § 8336(d)(1), or the disability retirement provisions of 5 U.S.C. § 8337;

"(B) An employee who is a reemployed annuitant under the provisions of 5 U.S.C. § 8344;

"(C) An employee who is in a critical position as defined by regulations promulgated by the Mayor;

"(D) An employee who is a sworn member of the Metropolitan Police Department or the Fire and Emergency Medical Services Department;

"(E) An employee who, for charges related to his or her employment duties, is under indictment for a felony, who has been convicted of a felony, or who plead guilty to a felony or who has been convicted after a plea of nolo contendere to a felony; or

"(F) An employee who, based on conduct related to his or her employment duties, has been convicted of a misdemeanor or who has plead guilty or has been convicted after a plea of nolo contendere to a misdemeanor.

"(8) For the purpose of paragraph (7)(E) of this subsection, the term 'felony' means a crime for which the penalty is at least imprisonment for 1 year or a fine of at least \$1,000.

"(9) An employee who receives an incentive payment under the Early Out Program shall not be eligible for reemployment with the District government for 5 years from the date of retirement, or hired or retained as a sole source consultant or personal services contractor for 5 years from the date of retirement."

"Sec. 802. Easy out retirement incentive.

"(a) Notwithstanding section 1106 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Code § 1-612.6), the Council of the District of Columbia adopts changes to the Career and Excepted Service compensation system under section 1104 of the District of Columbia Government Comprehensive

Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Code § 1-612.4), that authorize the Mayor to establish a retirement incentive program for certain District employees.

"(b) The changes to the compensation system are as follows:

"(1) The Mayor is authorized to establish an easy out retirement incentive program ('Easy Out Program') which shall apply to eligible employees under the personnel authority of the Mayor, and employees of any other personnel authority that is under the pay authority of the Mayor if the personnel authority chooses to participate in the Easy Out Program.

"(2) The Easy Out Program shall be effective for 120 days after the effective date of this act.

"(3) The Easy Out Program shall be limited to employees retiring under the optional retirement provisions of 5 U.S.C. § 8336(a), (b), or (f).

"(4) The Easy Out Program shall offer a retirement incentive of 50% of an employee's annual rate of basic pay from the employee's salary or pay schedule which was in effect on October 1, 1999, not to exceed \$30,000, to be paid within 1 year of the employee's retirement.

"(5) Retirement incentive payments shall be prorated in the case of a part-time employee.

"(6) Retirement incentive payments shall not be considered basic pay for computing retirement entitlement, insurance entitlement, any category of premium pay entitlement, lump-sum leave, or any other entitlement that is computed on basic pay.

"(7) No incentive payments shall be paid to:

"(A) An employee retiring under the law enforcement or firefighter provisions of 5 U.S.C. § 8336(c), the discontinued service/involuntary retirement provisions of 5 U.S.C. § 8336(d)(1), or the disability retirement provisions of 5 U.S.C. § 8337;

"(B) An employee who is a reemployed annuitant under the provisions of 5 U.S.C. § 8344;

"(C) An employee who is in a critical position as defined by regulations promulgated by the Mayor;

"(D) An employee who is a sworn member of the Metropolitan Police Department or the Fire and Emergency Medical Services Department;

"(E) An employee who, for charges related to his or her employment duties, is under indictment for a felony, who has been convicted of a felony, or who plead guilty to a felony or who has been convicted after a plea of nolo contendere to a felony; or

"(F) An employee who, based on conduct related to his or her employment duties, has been convicted of a misdemeanor or who has plead guilty or has been convicted after a plea of nolo contendere to a misdemeanor.

"(8) For the purpose of paragraph (7)(E) of this subsection, the term 'felony' means a crime

for which the penalty is at least imprisonment for 1 year or a fine of at least \$1,000.

“(9) An employee who receives an incentive payment under the Easy Out Program shall not be eligible for reemployment with the District

government for 5 years from the date of retirement, or hired or retained as a sole source consultant or personal services contractor for 5 years from the date of retirement.”

§ 1-626.03. District retirement benefits.

The District shall provide retirement benefits to all employees first employed after September 30, 1987, who would otherwise have been covered under the Civil Service Retirement System pursuant to 5 U.S.C. § 8331 except those specifically excluded by law or by rule.

(Mar. 3, 1979, D.C. Law 2-139, § 2603, as added Oct. 1, 1987, D.C. Law 7-27, § 2(g), 34 DCR 5079.)

Section references. — This section is referred to in §§ 1-529.01 1-611.03, 1-621.03, and 1-622.04.

Prior Codifications. — 1981 Ed., § 1-627.3.

Legislative history of Law 7-27. — For

legislative history of D.C. Law 7-27, see Historical and Statutory Notes following § 1-621.02.

Mayor's Orders. — Establishment of Pension Benefit Committee: See Mayor's Order 89-235, October 5, 1989.

§ 1-626.04. Definitions.

For the purpose of §§ 1-626.05 through 1-626.12, the term:

(1)(A) “Creditable service” means the period of employment to be recognized for purposes of eligibility for retirement benefits, which shall be set forth in rules promulgated by the Mayor pursuant to § 1-626.08.

(B) For purposes of vesting pursuant to § 1-626.10(b), creditable service for employees whose participation in the District Defined Contribution Plan ceases as a result of the implementation of the National Capital Revitalization and Self-Government Improvement Act of 1997, approved August 5, 1997 (Pub.L. No. 105-33), shall also include continuous service performed by nonjudicial employees of the District of Columbia courts after September 30, 1997, or service performed for a successor employer that provides the services previously performed by the District government toward the vesting requirement of the Defined Contribution Plan.

(2) “Detention officer” means an employee who is not covered by the Police and Fire Retirement System, whose duties are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against, or violation of, the laws of the United States or the District and whose duties may require frequent contact, supervision, inspection, training, employment, care, transportation, or rehabilitation of individuals in detention. The term “detention officer” includes:

(A) Employees engaged in the activities listed above who are transferred to a supervisory or administrative position;

(B) Employees of the District of Columbia Department of Corrections, its industries, and utilities who are engaged in the activities listed above;

(C) Employees of the Department of Human Services who are engaged in the activities listed above; and

(D) Members of the Board of Parole, parole officers, and probation officers who are engaged in the activities listed above.

(3) "Employee" means an individual first employed by the government of the District after September 30, 1987, who would have been covered by the Civil Service Retirement System pursuant to 5 U.S.C. § 8331 had the employee been first employed prior to October 1, 1987.

(4) "Internal Revenue Code" means the Internal Revenue Code of 1986, approved October 22, 1986 (100 Stat. 2085; 26 U.S.C. 1 et seq.).

(5)(A) "Fiduciary" means, except as otherwise provided in subparagraph (B) of this paragraph, any individual who, with respect to the District retirement benefits program:

(i) Exercises any discretionary authority or discretionary control respecting management of the Section 401(a) Trust established by § 1-626.11 or exercises any discretionary authority or discretionary control respecting management of the Trust's assets;

(ii) Renders investment advice for a fee or other compensation, direct or indirect, with respect to any monies or other property of the Trust, or has any authority or responsibility to do so; or

(iii) Has any discretionary authority or discretionary responsibility in the administration of the Trust.

(B) If any money or other property of the Trust is invested in securities issued by an investment company registered under An Act to provide for the registration and regulation of investment companies and investment advisers, and for other purposes (15 U.S.C. § 80a-1 et seq.), that investment shall not by itself cause the investment company or the investment company's adviser or principal underwriter to be deemed a fiduciary or a party in interest as those terms are defined in this chapter. Nothing contained in this subparagraph shall limit the duties imposed on that investment company, investment adviser, or principal underwriter by any other law.

(6) The term "party in interest" means:

(A) Any person having fiduciary responsibilities to the Trust;

(B) Any person providing services to the Trust;

(C) The government of the District of Columbia;

(D) An employee organization recognized as an exclusive representative of any participants in the Trust for purposes of collective bargaining pursuant to § 1-617.10; and

(E) A spouse or domestic partner, ancestor, lineal descendant, or spouse or domestic partner of a lineal descendant of any individual described in subparagraph (A) or (B) of this paragraph.

(7) The term "Trust" shall mean the Section 401(a) Trust established by § 1-626.11.

(Mar. 3, 1979, D.C. Law 2-139, § 2604, as added Oct. 1, 1987, D.C. Law 7-27, § 2(g), 34 DCR 5079; May 10, 1989, D.C. Law 7-231, § 3(3), 36 DCR 492; Mar. 24, 1990, D.C. Law 8-97, § 3(e), 37 DCR 1046; Feb. 5, 1994, D.C. Law 10-68, § 6, 40 DCR 6311; Apr. 29, 1998, D.C. Law 12-92, § 2, 45 DCR 1314; Sept. 12, 2008, D.C. Law 17-231, § 3(k), 55 DCR 6758.)

Cross references. — Charter school employees, retirement benefits, determination of period of creditable service, see §§ 38-1702.08 and 38-1802.07.

Section references. — This section is referred to in §§ 1-529.01, 1-611.03, 1-621.03, 1-622.04, 38-1702.08, and 38-1802.07.

Prior Codifications. — 1981 Ed., § 1-627.4.

Effect of amendments. — D.C. Law 17-231, in par. (6)(E), substituted “spouse or domestic partner” for “spouse”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Defined Contribution Transition Vesting Temporary Amendment Act of 1998 (D.C. Law 12-57, March 18, 1998, law notification 45 DCR 1894).

Emergency legislation. — For temporary amendment of section, see § 2 of the Defined Contribution Transition Vesting Emergency Amendment Act of 1997 (D.C. Act 12-154, September 29, 1997, 44 DCR 5793), and see § 2 of the Defined Contribution Transition Vesting Clarification Emergency Amendment Act of 1997 (D.C. Act 12-215, December 5, 1997, 44 DCR 7618).

For temporary amendment of D.C. Law 12-57, see § 3 of the Defined Contribution Transition Vesting Clarification Emergency Amendment Act of 1997 (D.C. Act 12-215, December 5, 1997, 44 DCR 7618).

Legislative history of Law 7-27. — For

legislative history of D.C. Law 7-27, see Historical and Statutory Notes following § 1-621.02.

Legislative history of Law 7-231. — For legislative history of D.C. Law 7-231, see Historical and Statutory Notes following § 1-611.11.

Legislative history of Law 8-97. — For legislative history of D.C. Law 8-97, see Historical and Statutory Notes following § 1-626.13.

Legislative history of Law 10-68. — Law 10-68, the “Technical Amendments Act of 1993,” was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

Legislative history of Law 12-92. — Law 12-92, the “Defined Contribution Transition Vesting Clarification Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-407, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 4, 1997, and January 6, 1998, respectively. Signed by the Mayor on January 26, 1998, it was assigned Act No. 12-265 and transmitted to both Houses of Congress for its review. D.C. Law 12-92 became effective on April 29, 1998.

Legislative history of Law 17-231. — For Law 17-231, see notes following § 1-301.45.

§ 1-626.05. District retirement benefits program.

The retirement benefits program of the District shall consist of:

(1) A defined benefit plan, as provided in 42 U.S.C. § 301 et seq. (“Social Security Act”);

(2) An employee deferred compensation plan pursuant to § 457 of the Internal Revenue Code [26 U.S.C. § 457] governed by Chapter 36 of Title 47; and

(3) A defined contribution plan pursuant to § 401(a) of the Internal Revenue Code [26 U.S.C. § 401].

(Mar. 3, 1979, D.C. Law 2-139, § 2605, as added Oct. 1, 1987, D.C. Law 7-27, § 2(g), 34 DCR 5079; Apr. 30, 1988, D.C. Law 7-104, § 10(b), 35 DCR 147.)

Section references. — This section is referred to in §§ 1-611.03, 1-621.03, 1-622.04, 1-626.04, 1-626.06, 1-626.07, 1-626.08, 1-626.09, 1-626.10, 1-626.11, 1-626.12, and 1-529.01.

Prior Codifications. — 1981 Ed., § 1-627.5.

Legislative history of Law 7-27. — For legislative history of D.C. Law 7-27, see Historical and Statutory Notes following § 1-621.02.

Legislative history of Law 7-104. — For legislative history of D.C. Law 7-104, see Historical and Statutory Notes following § 1-604.08.

References in text. — Section 457 of the Internal Revenue Code, referred to in paragraph (2), is codified as 26 U.S.C. § 457.

Section 401(a) of the Internal Revenue Code, referred to in paragraph (3), is classified as 26 U.S.C. § 401(a).

Mayor's Orders. — Establishment of Pension Benefit Committee: See Mayor's Order 89-235, October 5, 1989.

CASE NOTES

ANALYSIS

Construction and application.
Private right of action.

Construction and application.

Administrator of employee deferred compensation plan did not violate statutes governing the duties of fiduciaries of defined contribution plans and District of Columbia retirement funds, when laptop containing confidential personal information was stolen from home of administrator's employee, as the deferred compensation plan was not a defined contribution plan or a retirement fund. *Randolph v. ING Life Ins. & Annuity Co.*, 973 A.2d 702, 2009 D.C. App. LEXIS 231 (2009).

Private right of action.

Even if statute governing duties of fiduciaries

of District of Columbia retirement funds applied to deferred compensation plan, such statute did not establish a private right to sue for damages for conduct creating a risk of identity theft, for purposes of action that participants in employee deferred compensation plan brought against plan administrator after laptop computer containing confidential personal information was stolen from home of employee of plan administrator. *Randolph v. ING Life Ins. & Annuity Co.*, 973 A.2d 702, 2009 D.C. App. LEXIS 231 (2009).

§ 1-626.06. Contracting authority.

The Mayor may select 1 or more contractors to provide services as may be part of the defined contribution plan under § 1-626.05(3). Any contract under § 1-626.05(2) and (3) shall be in accordance with the provisions of Chapter 3 of Title 2.

(Mar. 3, 1979, D.C. Law 2-139, § 2606, as added Oct. 1, 1987, D.C. Law 7-27, § 2(g), 34 DCR 5079.)

Section references. — This section is referred to in §§ 1-611.03, 1-621.03, 1-622.04, 1-626.04, and 1-529.01.

Prior Codifications. — 1981 Ed., § 1-627.6.

Legislative history of Law 7-27. — For

legislative history of D.C. Law 7-27, see Historical and Statutory Notes following § 1-621.02.

Mayor's Orders. — Establishment of Pension Benefit Committee: See Mayor's Order 89-235, October 5, 1989.

§ 1-626.07. Eligibility.

(a) An employee is eligible to participate in the deferred compensation plan under § 1-626.05(2) upon commencement of employment with the District.

(b) An employee is eligible to participate in the defined contribution plan under § 1-626.05(3) upon the completion of 1 year of employment with the District.

(Mar. 3, 1979, D.C. Law 2-139, § 2607, as added Oct. 1, 1987, D.C. Law 7-27, § 2(g), 34 DCR 5079.)

Section references. — This section is referred to in §§ 1-611.03, 1-621.03, 1-622.04, 1-626.04, and 1-529.01.

Prior Codifications. — 1981 Ed., § 1-627.7.

Legislative history of Law 7-27. — For

legislative history of D.C. Law 7-27, see Historical and Statutory Notes following § 1-621.02.

§ 1-626.08. Rules; eligibility.

(a) In order to ensure proper implementation of the District retirement program under § 1-626.05 by October 1, 1987, the Mayor may issue temporary rules regarding the District retirement program that shall not be subject to Council review. These temporary rules shall remain in effect only until the proposed rules have been approved or been deemed approved by the Council in accordance with subsection (b) of this section.

(b) The Mayor shall, pursuant to subchapter I of Chapter 5 of Title 2, issue proposed rules to implement the provisions of this subchapter. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(c) The proposed rules shall prescribe the time, manner, and conditions under which employees are eligible for coverage. The proposed rules may exclude employees on the basis of the nature and type of employment or conditions of employment such as short-term appointment, seasonal employment, intermittent or part-time employment, and employment of a similar nature, but shall not exclude an employee or group of employees solely on the basis of hazardous nature of employment.

(Mar. 3, 1979, D.C. Law 2-139, § 2608, as added Oct. 1, 1987, D.C. Law 7-27, § 2(g), 34 DCR 5079.)

Section references. — This section is referred to in §§ 1-611.03, 1-621.03, 1-622.04, 1-626.04, and 1-529.01.

Prior Codifications. — 1981 Ed., § 1-627.8.

Legislative history of Law 7-27. — For legislative history of D.C. Law 7-27, see Historical and Statutory Notes following § 1-621.02.

Editor's notes. — Approval in part and disapproval in part proposed rules for defined

Contribution Pension Plan: Pursuant to Resolution 8-127, the "Defined Contribution Pension Plan Rules Approval or Disapproval Resolution of 1989", effective November 7, 1989, the Council approved in part and disapproved in part proposed rules for defined Contribution Pension Plan established by the District of Columbia Government Comprehension Merit Personnel Act of 1978, which were transmitted to the Council by the Mayor on July 14, 1989.

§ 1-626.09. Contributions.

(a) The District and each employee shall contribute to the defined benefit plan under § 1-626.05(1) the social security amounts mandated by federal law.

(b) Each employee may voluntarily contribute to the deferred compensation plan under § 1-626.05(2) in amounts not exceeding the limits set by § 457 of the Internal Revenue Code.

(c) The District shall contribute an amount equal to not less than 5% of the base salary of each employee participating in the defined contribution plan under § 1-626.05(3). The District contribution shall be made not less frequently than quarterly and shall be placed in the Section 401(a) Trust established by § 1-626.11.

(d) In addition to the contribution under subsection (c) of this section, the District shall contribute no less than an additional .5% of a detention officer's base salary to the Section 401(a) Trust established by § 1-626.11. The contribution shall be made not less frequently than quarterly.

(Mar. 3, 1979, D.C. Law 2-139, § 2609, as added Oct. 1, 1987, D.C. Law 7-27, § 2(g), 34 DCR 5079; Mar. 2, 1991, D.C. Law 8-190, § 2(e), 37 DCR 6721; Apr. 9, 1997, D.C. Law 11-198, § 301(b), 43 DCR 4569.)

Section references. — This section is referred to in §§ 1-611.03, 1-621.03, 1-622.04, 1-626.04, and 1-529.01.

Prior Codifications. — 1981 Ed., § 1-627.9.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 301(b) of Fiscal Year 1997 Budget Support Temporary Amendment Act of 1996 (D.C. Law 11-226, April 9, 1997, law notification 44 DCR 2584).

Emergency legislation. — For temporary amendment of section, see § 301(b) of the Fiscal Year 1997 Budget Support Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-2, February 19, 1997, 44 DCR 1590).

Legislative history of Law 7-27. — For legislative history of D.C. Law 7-27, see Historical and Statutory Notes following § 1-621.02.

Legislative history of Law 8-190. — For legislative history of D.C. Law 8-190, see Historical and Statutory Notes following § 1-621.14.

Legislative history of Law 11-198. — For legislative history of D.C. Law 11-198, see Historical and Statutory Notes following § 1-611.10.

References in text. — Section 457 of the Internal Revenue Code referred to in subsection (b) of this section is classified as 26 U.S.C. § 457.

Editor's notes. — Application of provisions of Law 11-198: Section 1001 of D.C. Law 11-198 provided that Titles I, II, III, V, and VI and sections 405 and 406 of the act shall apply after September 30, 1996.

Mayor authorized to enter agreements to modify health benefits contracts: See Historical and Statutory Notes following § 1-611.03.

CASE NOTES

ANALYSIS

Evidence.
Regulations.

Evidence.

Retired District of Columbia employee was required to present expert testimony in order to present a prima facie case that the District underpaid his retirement benefits; employee assumed that benefits he was entitled to could be calculated simply by knowing the annual amounts that District should have deposited into defined contribution plan trust and inflating those amounts by fund performance, but expert testimony was needed to explain such complexities as the impact of fact that District contributed to trust in installments, and the concurrent impact of fluctuating rates of return

from quarter to quarter. *Thomas v. District of Columbia*, 942 A.2d 1154, 2008 D.C. App. LEXIS 84 (2008).

Regulations.

Holdover regulation promulgated to implement District of Columbia's defined contribution retirement plan, purporting to require District to contribute not less than 7% of employee's base salary to retirement trust on employee's behalf, could not be given effect, in light of amended statute governing retirement plan that required District to contribute not less than 5%; although letter of the statute did not conflict with the regulation, because 7% is "not less than" 5%, purpose of statute was to reduce District's retirement plan contribution burden. *Thomas v. District of Columbia*, 942 A.2d 1154, 2008 D.C. App. LEXIS 84 (2008).

§ 1-626.10. Vesting.

(a) The employee's contribution to the deferred compensation plan under § 1-626.05(2) and the earnings on those contributions shall vest immediately.

(b) The District's contributions to the defined contribution plan under § 1-626.05(3) and the earnings on the District's contributions for each employee shall vest when the employee dies or becomes entitled to disability

benefits under the Social Security Act, or in accordance with the following vesting schedule:

<u>Years of Credible Service</u>	<u>Vested Percentage</u>
Less than 2	0%
2	20%
3	40%
4	60%
5 or more	100%.

(c) The employee's interest in the benefits in the defined contribution plan that has not vested in accordance with subsection (b) of this section shall be forfeited after separation from employment. An employee in a defined contribution plan under § 1-626.05(3) who is removed or suspended without pay and later reinstated or restored to duty on the grounds that the removal or suspension was unwarranted or unjustified shall be entitled to resume immediately participation in the defined contribution plan, with appropriate increases made in the Section 401(a) Trust to reflect the District contributions that would have been made had the employee not been removed or suspended. An employee who is otherwise separated from employment and is later reinstated to employment with the District within 1 year of separation shall be entitled to immediately resume participation in the defined contribution plan.

(d)(1) Notwithstanding subsections (b) and (c) of this section, the District's contributions to the defined contribution plan under § 1-626.05(3) for Devon Brown, Director of the Department of Corrections ("Director Brown"), and the earnings on the District's contributions shall vest when Director Brown completes 5 years of creditable service with the District, dies, or becomes entitled to disability benefits under the Social Security Act.

(2) Director Brown's interest in the benefits in the defined contribution plan shall not be forfeited upon separation from employment if separation occurs prior to the completion of 5 years of creditable service as calculated pursuant to this subsection.

(3) For the purposes of this subsection, creditable service shall be calculated as either consecutive service or a combination of different periods of service as a District government employee.

(Mar. 3, 1979, D.C. Law 2-139, § 2610, as added Oct. 1, 1987, D.C. Law 7-27, § 2(g), 34 DCR 5079; Nov. 19, 2008, D.C. Law 17-260, § 2, 55 DCR 10883; Dec. 8, 2009, D.C. Law 18-82, § 2, 56 DCR 8140.)

Cross references. — Public defender service, retirement benefits, determination of period of creditable service for purposes of vesting, see § 2-1605.

Section references. — This section is referred to in §§ 1-527.01, 1-611.03, 1-621.03, 1-622.04, 1-626.04, 1-529.01, and 2-1605.

Prior Codifications. — 1981 Ed., § 1-627.10.

Effect of amendments. — D.C. Law 17-260 added subsec. (d).

D.C. Law 18-82 rewrote subsec. (b); and, in subsec. (c), substituted "that has not vested in accordance with subsection (b) of this section shall be forfeited after separation from employment" for "shall be forfeited upon separation from employment if separation occurs prior to completion of 5 years of creditable service".

Legislative history of Law 7-27. — For legislative history of D.C. Law 7-27, see Historical and Statutory Notes following § 1-621.02.

Legislative history of Law 17-260. — Law

17-260, the "Defined Contribution Plan Modifications for the Director of the Department of Corrections Devon Brown Amendment Act of 2008", was introduced in Council and assigned Bill No. 17-667 which was referred to the Committee Public Safety and Judiciary. The Bill was adopted on first and second readings on July 15, 2008, and September 16, 2008, respectively. Signed by the Mayor on September 29, 2008, it was assigned Act No. 17-511 and transmitted to both Houses of Congress for its review. D.C. Law 17-260 became effective on November 19, 2008.

Legislative history of Law 18-82. — Law

18-82, the "Pension Vesting Amendment Act of 2009", as introduced in Council and assigned Bill No. 18-3, which was referred to the Committee on Government Operations and the Environment. The bill was adopted on first and second readings on July 14, 2009, and September 22, 2009, respectively. Signed by the Mayor on October 9, 2009, it was assigned Act No. 18-201 and transmitted to both Houses of Congress for its review. D.C. Law 18-82 became effective on December 8, 2009.

Editor's notes. — Section 3 of D.C. Law 17-260 provided that section 2 shall apply as of April 5, 2002.

§ 1-626.11. Establishment and administration of Section 401(a) Trust.

(a) There shall be established an irrevocable trust called the Section 401(a) Trust, that shall be managed so as to be exempt from income tax under § 501(a) of the Internal Revenue Code. The funds contributed by the District under the defined contribution plan of § 1-626.05(3) shall be placed in the Section 401(a) Trust. The assets of the Section 401(a) Trust shall be administered by the Mayor.

(b) The cost of any contract for provisions of services as may be part of the defined contribution plan under § 1-626.05(3) shall be paid solely from the assets of the Section 401(a) Trust or from a fund or funds established to administer the defined contribution plan.

(c) Repealed.

(Mar. 3, 1979, D.C. Law 2-139, § 2611, as added Oct. 1, 1987, D.C. Law 7-27, § 2(g), 34 DCR 5079; Mar. 7, 1991, D.C. Law 8-220, § 3, 38 DCR 199; Apr. 18, 1996, D.C. Law 11-110, § 3, 43 DCR 530.)

Cross references. — Financial institutions, deposits and investments, "district funds" defined, see § 47-351.01.

Section references. — This section is referred to in §§ 1-529.01, 1-611.03, 1-621.03, 1-622.04, 1-626.04, and 1-626.09.

Prior Codifications. — 1981 Ed., § 1-627.11.

Legislative history of Law 7-27. — For legislative history of D.C. Law 7-27, see Historical and Statutory Notes following § 1-621.02.

Legislative history of Law 8-220. — Law 8-220 was introduced in Council and assigned Bill No. 8-558, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December

27, 1990, it was assigned Act No. 8-303 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-110. — Law 11-110, the "Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

References in text. — Section 501(a) of the Internal Revenue Code referred to in subsection (a) of this section is codified as 26 U.S.C. § 501(a).

§ 1-626.12. Payment of benefits.

The payment of benefits under the retirement programs under § 1-626.05(2)

and (3) shall be in accordance with the applicable provisions of §§ 401(a) and 457 of the Internal Revenue Code [26 U.S.C. §§ 401(a) and 457].

(Mar. 3, 1979, D.C. Law 2-139, § 2612, as added Oct. 1, 1987, D.C. Law 7-27, § 2(g), 34 DCR 5079.)

Section references. — This section is referred to in §§ 1-611.03, 1-621.03, 1-622.04, 1-626.04, and 1-529.01.

Prior Codifications. — 1981 Ed., § 1-627.12.

Legislative history of Law 7-27. — For

legislative history of D.C. Law 7-27, see Historical and Statutory Notes following § 1-621.02.

References in text. — Sections 401(a) and 457 of the Internal Revenue Code referred to in this section are classified as 26 U.S.C. §§ 401(a) and 457, respectively.

§ 1-626.13. Duties and liabilities of Trustee; exemptions; violations and sanctions.

(a) A fiduciary shall discharge his duties with respect to the Trust solely in the interest of the participants and beneficiaries and:

(1) For the exclusive purpose of providing benefits to participants and beneficiaries;

(2) With the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent individual acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(3) By diversifying the investments of the Trust so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(4) In accordance with the provisions of law, documents, and instruments governing the retirement program to the extent that the documents and instruments are consistent with this chapter.

(b) In addition to any liability which he may have under any other provision of this section, a fiduciary with respect to the Trust shall be liable for a breach of fiduciary responsibility of another fiduciary with respect to the Trust:

(1) If he knowingly participates in, or knowingly undertakes to conceal, an act or omission of the other fiduciary, knowing the act or omission is a breach of fiduciary responsibility;

(2) If, by his failure to discharge the responsibilities which give rise to his status as a fiduciary, he has enabled the other fiduciary to commit a breach of fiduciary responsibility; or

(3) If he has knowledge of a breach of fiduciary responsibility by the other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach.

(c) Except as provided in subsections (f), (g), and (h) of this section, a fiduciary with respect to the Trust shall not cause the Trust to engage in a transaction, if he knows or should know that the transaction constitutes a direct or indirect:

(1) Sale or exchange, or leasing, of any property between the Trust and a party in interest;

(2) Lending of money or other extension of credit between the Trust and a party in interest;

(3) Furnishing of goods, services, or facilities between the Trust and a party in interest;

(4) Transfer to, or use by or for the benefit of, a party in interest, of any assets of the Trust.

(d) Except as provided in subsection (h) of this section, a fiduciary with respect to the Trust shall not:

(1) Deal with the assets of the Trust in his own interest or for his own account;

(2) In his individual or in any other capacity act in any transaction involving the Trust on behalf of a party (or represent a party) whose interests are adverse to the interests of the Trust or the interests of its participants or beneficiaries; or

(3) Receive any consideration for his own personal account from any party dealing with the Trust in connection with a transaction involving the assets of the Trust.

(e) A transfer of real or personal property by a party in interest shall be treated as a sale or exchange if the property is subject to a mortgage or similar lien which the Trust assumes or if it is subject to a mortgage or similar lien which a party in interest placed on the property within the 10-year period ending on the date of the transfer.

(f) The prohibitions provided in subsection (c) of this section shall not apply to any of the following transactions:

(1) Contracting or making reasonable arrangements with a party in interest for office space, or legal, accounting, or other services necessary for the establishment or operation of the Trust, if no more than reasonable compensation is paid for it;

(2) The investment of all or part of the Trust's assets in deposits which bear a reasonable interest rate in a bank or similar financial institution supervised by the United States or a state (including the District), if such bank or other institution is a fiduciary of the Trust and if the investment is expressly authorized by the Mayor or by a fiduciary (other than the bank or institution or an affiliate) who is expressly empowered by the Mayor to make such investment;

(3) The providing of any ancillary service by a bank or similar financial institution supervised by the United States or any state (including the District) if the bank or other institution is a fiduciary of the Trust and if:

(A) The bank or similar financial institution has adopted adequate internal safeguards which assure that the providing of the ancillary service is consistent with sound banking and financial practice, as determined by federal or state supervisory authority; and

(B) The extent to which the ancillary service is provided is subject to specific guidelines issued by the bank or similar financial institution (as determined by the Mayor after consultation with federal and state supervisory authority), and adherence to the guidelines would reasonably preclude the bank or similar financial institution from providing the ancillary service (i) in an excessive and unreasonable manner, and (ii) in a manner that would be inconsistent with the best interests of participants and beneficiaries of the

retirement program. The ancillary services shall not be provided for more than reasonable compensation;

(4) The exercise of a privilege to convert securities, but only if the Trust receives no less than adequate consideration pursuant to the conversion; or

(5) Any transaction between the Trust and a common or collective trust fund or pooled investment fund maintained by a party in interest which is a bank or trust company supervised by a state (including the District) or a federal agency, or a pooled investment fund of an insurance company qualified to do business in a state, if:

(A) The transaction is a sale or purchase of an interest in the Trust;

(B) The bank, trust company, or insurance company receives not more than reasonable compensation; and

(C) The transaction is expressly permitted by the Mayor, or by a fiduciary (other than the bank, trust company, insurance company, or any affiliate) who has authority to manage and control the assets of the Trust.

(g) Nothing in subsection (c) of this section shall be construed to prohibit any fiduciary from:

(1) Receiving any benefit to which he may be entitled as a participant or beneficiary in the retirement program, so long as the benefit is computed and paid on a basis which is consistent with the terms of the retirement program as applied to all other participants and beneficiaries;

(2) Receiving any reasonable compensation for services rendered, or for the reimbursement of expenses properly and actually incurred, in the performance of his duties with respect to the Trust; or

(3) Serving as a fiduciary in addition to being an officer, employee, agent, or other representative of a party in interest.

(h) The Mayor may submit to the Council for its approval by resolution proposed exemptions from all or part of the restrictions imposed by subsections (c) and (d) of this section. The Mayor shall only request exemptions that have been granted by the United States Secretary of Labor. Any proposed exemption submitted to the Council shall be accompanied by written findings by the Mayor that the proposed exemption is administratively feasible, in the best interests of the Trust and its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the Trust.

(i)(1) Any person who is a fiduciary with respect to the Trust who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this section shall be personally liable to make good to the Trust any losses to the Trust resulting from each breach and to restore to the Trust any profits of the fiduciary which have been made through the use of assets of the Trust by the fiduciary and shall be subject to whatever other equitable or remedial relief the court may deem appropriate, including removal of the fiduciary.

(2) No fiduciary shall be liable with respect to a breach of fiduciary duty under this section if the breach was committed before he became a fiduciary or after he ceased to be a fiduciary.

(3) No action may be commenced under this chapter with respect to a fiduciary's breach of any responsibility, duty, or obligation under this section later than 3 years from the date the plaintiff knew or should have known of the

alleged breach, except that in the case of fraud or concealment, the action may be commenced not later than 6 years after the date of the plaintiff's discovery of the alleged breach or violation.

(Mar. 3, 1979, D.C. Law 2-139, § 2613, as added Mar. 24, 1990, D.C. Law 8-97, § 3(f), 37 DCR 1046.)

Prior Codifications. — 1981 Ed., § 1-627.13.

Legislative history of Law 8-97. — Law 8-97 was introduced in Council and assigned Bill No. 8-267, which was referred to the Committee on Government Operations. The Bill

was adopted on first and second readings on December 19, 1989, and January 16, 1990, respectively. Signed by the Mayor on January 26, 1990, it was assigned Act No. 8-149 and transmitted to both Houses of Congress for its review.

CASE NOTES

Construction and application.

Administrator of employee deferred compensation plan did not violate statutes governing the duties of fiduciaries of defined contribution plans and District of Columbia retirement funds, when laptop containing confidential per-

sonal information was stolen from home of administrator's employee, as the deferred compensation plan was not a defined contribution plan or a retirement fund. *Randolph v. ING Life Ins. & Annuity Co.*, 973 A.2d 702, 2009 D.C. App. LEXIS 231 (2009).

§ 1-626.14. Civil actions.

A civil action may be brought by a participant or a beneficiary of the Trust, or by the District, to enjoin any act or practice that violates any provision of this chapter or the terms of the retirement program, and for other appropriate legal and equitable relief. In any action under this chapter, the court in its discretion may allow the prevailing party, other than the District, a reasonable attorney fee and costs of action.

(Mar. 3, 1979, D.C. Law 2-139, § 2614, as added Mar. 24, 1990, D.C. Law 8-97, § 3(f), 37 DCR 1046.)

Prior Codifications. — 1981 Ed., § 1-627.14.

Legislative history of Law 8-97. — For

legislative history of D.C. Law 8-97, see Historical and Statutory Notes following § 1-626.13.

CASE NOTES

Construction and application.

Retired District of Columbia employee was not entitled to bring action for alleged injuries resulting from alleged late payment of his retirement benefits, under statute authorizing actions for appropriate legal and equitable relief from any act or practice violating any provision of District's retirement program,

since under regulation promulgated to implement retirement plan, liability of District's retirement program with respect to distribution of benefits was limited to contributions and earnings under the plan. *Thomas v. District of Columbia*, 942 A.2d 1154, 2008 D.C. App. LEXIS 84 (2008).

Subchapter XXVII. Temporary Assignment of District Employees.

§ 1-627.01. Policy.

(a) The District government recognizes that intergovernmental and private sector cooperation are essential factors in resolving problems affecting the District and that the temporary assignment of personnel between and among governmental agencies, at the same or different levels of government, private sector organizations, and institutions of higher education, is a significant factor in achieving such cooperation.

(b) Any agency is authorized to participate in a program of personnel interchange with private sector organizations, institutions of higher education, or agencies of federal, state, and local governments; provided, however, that the period of original assignment cannot exceed 2 years, but with the concurrence of the agencies or organizations and the employee involved, the assignment period may be extended in increments of one year.

(Mar. 3, 1979, D.C. Law 2-139, § 2701, 25 DCR 5740; Mar. 5, 1996, D.C. Law 11-98, § 1101(a), 43 DCR 5.)

Section references. — This section is referred to in § 1-627.02.

Prior Codifications. — 1981 Ed., § 1-628.1.

1973 Ed., § 1-357.1.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 11-78. — For legislative history of D.C. Law 11-78, see Historical and Statutory Notes following § 1-624.07.

Legislative history of Law 11-98. — For legislative history of D.C. Law 11-98, see Historical and Statutory Notes following § 1-624.07.

§ 1-627.02. Status of District employees while on assignment.

(a) Any employee of a District agency participating in an exchange of personnel as authorized in § 1-627.01 may be considered, during such participation, to be:

(1) On detail to regular work assignments of the receiving agency or organization; or

(2) In a status of leave of absence from his or her position in the sending agency.

(b) Any employee who is on detail is entitled to the same salary and benefits to which he or she would otherwise be entitled and shall remain an employee of the sending agency for all other purposes except that the supervision of duties during the period of detail may be governed by agreement between the sending agency and the receiving agency or organization.

(c) An employee who is on a leave of absence is entitled to at least the same salary and benefits to which he or she would otherwise be entitled. The salary and benefits shall be paid by the receiving agency or organization except as otherwise agreed between the sending and the receiving agencies or organizations.

(d) The receiving agency or organization may grant annual leave or other time off with compensation to the extent authorized by law applicable to the sending agency.

(e) Except as otherwise provided in this chapter, an employee who is on a status of leave of absence has the same rights, benefits and obligations as any other employee of the sending agency who is on a leave of absence status for any other purpose.

(f) Any employee who participates in a temporary assignment under this subchapter and who suffers disability or death as a result of personal injury arising out of and in the course of the assignment, or sustained in performance of duties in connection therewith, shall be treated, for the purposes of the District's disability compensation program, as an employee who has sustained such injury in the performance of such duty, but shall not receive disability or injury benefits under that program for any period for which he or she is entitled to and elects to receive similar benefits under the employee compensation of the receiving agency or organization.

(Mar. 3, 1979, D.C. Law 2-139, § 2702, 25 DCR 5740; Mar. 5, 1996, D.C. Law 11-98, § 1101(b), 43 DCR 5.)

Cross references. — Office of Interpreter Services, assignment of interpreters to another agency, see § 2-1911.

Prior Codifications. — 1981 Ed., § 1-628.2.

1973 Ed., § 1-357.2.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 11-78. — For legislative history of D.C. Law 11-78, see Historical and Statutory Notes following § 1-624.07.

Legislative history of Law 11-98. — For legislative history of D.C. Law 11-98, see Historical and Statutory Notes following § 1-624.07.

§ 1-627.03. Status of employees of other governments or organizations.

(a) When any agency of the District acts as a receiving agency, employees of the sending agency or organization who are assigned under authority of this subchapter may:

(1) Be given appointments in the receiving agency covering the periods of such assignments with compensation to be paid from the receiving agency funds or without compensation; or

(2) Be considered to be on detail to the receiving agency.

(b) The appointment of an employee of another government or organization, assigned to a District agency, may be made without regard to the laws or rules and regulations governing the selection of employees in the Career and Educational Services.

(c) An employee of another government or organization who is detailed to a District agency may not by virtue of the detail be considered to be an employee of the District, except as provided in this section, nor may he or she be directly paid a salary or wage by the District agency. The assignment agreement may, however, authorize the District agency to reimburse the sending agency or organization for all or any part of the employee's salary and fringe benefits.

The agreement between the sending agency or organization and the receiving agency may govern the supervision of the duties of such employees during the period of detail.

(d) The District government shall treat any employee of a sending agency or organization assigned to the District who suffers disability or death as a result of personal injury arising out of and in the course of such assignment, or sustained in the performance of duties, as a District employee for the purpose of the District's employee disability compensation program. An employee of a sending agency or organization is not entitled to benefits under that program for any period for which he or she elects similar benefits under the employee compensation program of his or her permanent employer.

(Mar. 3, 1979, D.C. Law 2-139, § 2703, 25 DCR 5740; Mar. 5, 1996, D.C. Law 11-98, § 1101(c), 43 DCR 5.)

Prior Codifications. — 1981 Ed., § 1-628.3.

1973 Ed., § 1-357.3.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 11-78. — For

legislative history of D.C. Law 11-78, see Historical and Statutory Notes following § 1-624.07.

Legislative history of Law 11-98. — For legislative history of D.C. Law 11-98, see Historical and Statutory Notes following § 1-624.07.

§ 1-627.04. Travel expenses.

(a) A District agency may, in accordance with the applicable travel rules and regulations, pay the travel expenses of an employee assigned to another government, private sector organization, or institution of higher education on either a detail or leave basis, but shall not pay the travel expenses of any employee incurred in connection with his or her work assignment at the receiving agency. If the assignment will be for a period of time exceeding 9 months, travel expenses may include expenses of transportation of immediate family, household goods, and personal effects to and from the location of the receiving agency. If the period of assignment is less than 9 months, the District agency may pay a daily allowance to the employee on assignment or detail.

(b) A District agency may, in accordance with the applicable travel rules and regulations, pay travel expenses of a person assigned to it under this subchapter during the period of such an assignment on the same basis as if he or she were a regular employee of the District.

(c) The costs associated with travel, relocation, and daily expenses may be shared by the participating governments, private sector organization, or institution of higher education or be borne solely by either party to the agreement.

(Mar. 3, 1979, D.C. Law 2-139, § 2704, 25 DCR 5740; Mar. 5, 1996, D.C. Law 11-98, § 1101(d), 43 DCR 5.)

Prior Codifications. — 1981 Ed., § 1-628.4.

1973 Ed., § 1-357.4.

Legislative history of Law 2-139. — For

legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 11-78. — For

legislative history of D.C. Law 11-78, see Historical and Statutory Notes following § 1-624.07.

Legislative history of Law 11-98. — For

legislative history of D.C. Law 11-98, see Historical and Statutory Notes following § 1-624.07.

§ 1-627.05. Agreements authorized.

(a) Any assignment entered into by a District agency under the authority of this subchapter must be implemented by a written agreement and this agreement shall contain the following provisions:

(1) The signature of the employee to be assigned indicating he or she fully concurs in the assignment and has been made aware of all appropriate rules and regulations governing the assignment;

(2) The approval of appropriate officials of the sending and receiving agencies or organizations;

(3) The terms and conditions for the payment of salary and other expenses, and any reimbursement among participating agencies or organizations; and

(4) The duties and responsibilities to be carried out on the assignment.

(b) The agreement must be signed by all participants before the assignment can become effective.

(Mar. 3, 1979, D.C. Law 2-139, § 2705, 25 DCR 5740; Mar. 5, 1996, D.C. Law 11-98, § 1101(e), 43 DCR 5; Apr. 9, 1997, D.C. Law 11-255, § 55(a), 44 DCR 1271.)

Prior Codifications. — 1981 Ed., § 1-628.5.

1973 Ed., § 1-357.5.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 11-78. — For legislative history of D.C. Law 11-78, see Historical and Statutory Notes following § 1-624.07.

Legislative history of Law 11-98. — For legislative history of D.C. Law 11-98, see His-

torical and Statutory Notes following § 1-624.07.

Legislative history of Law 11-255. — Law 11-255, the “Second Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

§ 1-627.06. Special rules governing the assignment of employees from private sector organizations to the District.

(a) In addition to the requirements set forth in § 1-627.05, the requirements in this section shall apply to all written agreements in which an employee of a private sector organization is assigned to work for a District government agency.

(b) Prior to entering into an agreement to assign a private sector employee to a District agency, the head of the agency shall prepare a written determination and findings explaining why the agency cannot use other District government personnel or procurement policies or procedures to secure the professional services that would be provided through the agreement. The head

of the District agency shall not enter into an agreement for interagency personnel exchange with a private sector organization unless the Director of Personnel (or the Chief Technology Officer, in the case of the Office of the Chief Technology Officer) or the independent personnel authority certifies in writing that the agency has exhausted every effort to recruit its human resource needs through standard recruitment practices or fill its professional needs through standard procurement procedures without success. The Director of Personnel (or the Chief Technology Officer, in the case of the Office of the Chief Technology Officer) or the independent personnel authority shall retain a copy of the determination and findings as part of the official file for the agreement.

(c) The agreement which contains the terms and conditions for the payment or reimbursement of salary, benefits, and other expenses to the private sector organization shall provide that:

(1) The private sector organization shall not receive compensation in a manner to earn a profit from the assignment of its personnel to the District agency;

(2) An individual assigned to the District government from a private sector organization may receive compensation and fringe benefits equal to those he or she would have received from the private sector organization in the absence of the assignment to the District agency and in no event shall the individual receive greater compensation or fringe benefits than he or she would have received from the private sector organization in the absence of the assignment to the District agency; and

(3) The District agency shall reimburse the private sector organization by paying for the documented salary; the cost of applicable fringe benefits including payroll taxes, social security, unemployment insurance, worker's compensation insurance, health insurance, pensions, Federal Insurance Contributions Act payments; and general and administrative costs calculated in accordance with subsection (f) of this section, except that in the case of the Office of the Chief Technology Officer, general and administrative costs shall include reasonable overhead costs and shall be calculated by the Chief Technology Officer (as determined under such criteria as the Chief Technology Officer independently deems appropriate subject to the review of the City Administrator, including a consideration of standards used to calculate general, administrative, and overhead costs for off-site employees found in Federal law and regulation and in general private industry practice).

(d) The private sector organization shall certify the accuracy of the cost of the salary, fringe benefits, and general and administrative costs included in the reimbursement agreement. The District agency shall reserve the right to audit those costs under the circumstances and methods it deems appropriate.

(e) A former District government employee shall be prohibited, for a period of 2 years after his or her separation from District government employment, from participating in a personnel exchange agreement between the District government and a private sector organization.

(f) Not later than 45 days after the end of each fiscal year (beginning with fiscal year 2002), the Chief Technology Officer shall prepare and submit to the Council and to the Committees on Appropriations of the House of Represen-

tatives and Senate a report describing all agreements entered into by the Chief Technology Officer under this section which are in effect during the fiscal year.

(g) Within 90 days of April 28, 2001, the Director of Personnel shall issue regulations governing the allowable reimbursement of general and administrative costs for the employees of private sector organizations assigned to work for a District agency. In developing the regulations, the Director of Personnel shall review standards used to calculate general and administrative costs for off-site employees found in federal law and regulation, and District of Columbia procurement regulations, and shall incorporate those standards into the implementing regulations for this title as the Director deems appropriate.

(h) For the purpose of this section, the term:

(1) "General and administrative costs" means any management, financial, or other expense which is incurred by or allocated to a business unit and which is for the general management and administration of the business unit as a whole.

(2) "Off-site employee" means an employee who is detailed or assigned to the work site of another organization.

(Mar. 3, 1979, D.C. Law 2-139, § 2706, as added, Apr. 28, 2001, D.C. Law 13-296, § 2, 48 DCR 2072; Dec. 21, 2001, 107 Stat. 948, Pub. L. 107-96, § 111(b).)

Effect of amendments. — Pub. L. 107-96, in subsec. (b), inserted "(or the Chief Technology Officer, in the case of the Office of the Chief Technology Officer)" following "Director of Personnel"; in subsec. (c)(3), inserted ", except that in the case of the Office of the Chief Technology Officer, general and administrative costs shall include reasonable overhead costs and shall be calculated by the Chief Technology Officer (as determined under such criteria as the Chief Technology Officer independently deems appropriate subject to the review of the City Administrator, including a consideration of standards used to calculate general, administrative, and overhead costs for off-site employees found in Federal law and regulation and in general private industry practice)"; redesignated former subsec. (f) as (g); and inserted new subsec. (f).

Emergency legislation. — For temporary (90 day) addition of section, see § 2 of the District Government Personnel Exchange Agreement Emergency Amendment Act of 2000

(D.C. Act 13-595, February 9, 2001, 48 DCR 2436).

Legislative history of Law 13-296. — Law 13-296, the "District Government Personnel Exchange Agreement Amendment Act of 2000", was introduced in Council and assigned Bill No. 13-896, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 5, 2000, and December 19, 2000, respectively. Signed by the Mayor on January 24, 2001, it was assigned Act No. 13-593 and transmitted to both Houses of Congress for its review. D.C. Law 13-296 became effective on April 28, 2001.

Editor's notes. — Section 111(c) of Pub. L. 107-96, 115 Stat. 948, provided:

"(c) The authority which the Chief Financial Officer of the District of Columbia exercised with respect to personnel, procurement, and the preparation of fiscal impact statements during a control period (as defined in Public Law 104-8) shall remain in effect through July 1, 2002."

Subchapter XXVIII. Agreements Authorized.

§ 1-628.01. Authority.

The Mayor, the District of Columbia Board of Education, and the Board of Trustees of the University of the District of Columbia are hereby authorized and empowered to enter into reciprocal agreements for the use of equipment,

materials, facilities, and services with any public or private agency or body for purposes deemed beneficial to the personnel system. For the purposes of agreements with federal agencies under this subchapter, the provisions of § 1-207.31 shall be met.

(Mar. 3, 1979, D.C. Law 2-139, § 2801, 25 DCR 5740; Feb. 24, 1987, D.C. Law 6-177, § 3(aa), 33 DCR 7241; Aug. 1, 1996, D.C. Law 11-152, § 302(z), 43 DCR 2978.)

Section references. — This section is referred to in § 1-631.08.

Prior Codifications. — 1981 Ed., § 1-629.1.

1973 Ed., § 1-358.1.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 6-177. — For legislative history of D.C. Law 6-177, see Historical and Statutory Notes following § 1-601.02.

Legislative history of Law 11-152. — For legislative history of D.C. Law 11-152, see Historical and Statutory Notes following § 1-602.02.

Editor's notes. — Repeal of § 3 of Law 6-177: Section 4(b) of D.C. Law 6-177 provided that the provisions of § 3 are repealed on the 1st day following the 36-month period after February 24, 1987.

Repeal of § 4(b) of Law 6-177: Section 3(b) of D.C. Law 8-74, effective March 15, 1990, provided that § 4(b) of D.C. Law 6-177 is repealed.

§ 1-628.02. Agreements required.

The Mayor shall enter into an agreement with the United States Civil Service Commission to carry out the purposes of subchapters XXI, XXII, and XXVI of this chapter.

(Mar. 3, 1979, D.C. Law 2-139, § 2802, 25 DCR 5740.)

Prior Codifications. — 1981 Ed., § 1-629.2.

1973 Ed., § 1-358.2.

Legislative history of Law 2-139. — For

legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

§ 1-628.03. Courts.

The Public Employee Relations Board is authorized to enter into agreements with the courts of the District of Columbia to implement a positive program of employee-employer relations.

(Mar. 3, 1979, D.C. Law 2-139, § 2803, 25 DCR 5740.)

Prior Codifications. — 1981 Ed., § 1-629.3.

1973 Ed., § 1-358.3.

Legislative history of Law 2-139. — For

legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

§ 1-628.04. Transit Commission.

The Mayor is hereby authorized and empowered to enter into an agreement with the Washington Metropolitan Area Transit Commission to implement the inclusion of the employees of such Commission as participants in the United States Civil Service Retirement System (Chapter 83 of Title 5 of the United States Code).

(Mar. 3, 1979, D.C. Law 2-139, § 2804, 25 DCR 5740.)

Prior Codifications. — 1981 Ed., § 1-629.4. legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.
1973 Ed., § 1-358.4.

Legislative history of Law 2-139. — For

§ 1-628.05. Agreements for disciplinary appeals.

The Mayor is authorized to enter into agreements with appropriate federal agencies to authorize them to continue the processing of administrative appeals of personnel actions by District government employees until such time as the rules and regulations of the Office of Employee Appeals are issued and the provisions of subchapter XVI of this chapter become effective. The agreement of the Mayor may provide for the existing standards of cause for disciplinary actions to continue in effect for the duration of the agreement.

(Aug. 7, 1980, D.C. Law 3-81, § 2(ff), 27 DCR 2632.)

Prior Codifications. — 1981 Ed., § 1-629.5. legislative history of D.C. Law 3-81, see Historical and Statutory Notes following § 1-602.02.

Legislative history of Law 3-81. — For

Subchapter XXIX. Employee Debt Set-Offs.

§ 1-629.01. Waiver of claims for erroneous employees payments.

(a) In accordance with rules issued by the Mayor, the Mayor may waive with written justification, in whole or part, a claim of the government against an employee or former employee of the District arising under § 1-629.02 when collection would be:

- (1) Against equity;
- (2) Against good conscience; and
- (3) Not in the best interests of the District.

(b) The authority to waive a claim for erroneous payment may not be exercised if there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee, former employee, or any other person having an interest in obtaining a waiver of the claim.

(c) After the expiration of 3 years immediately following the date on which the erroneous payment was discovered by the government, or 3 years immediately following March 3, 1979, whichever is later, the Mayor may not make any claim for an erroneous payment or debt owed to the government, except where the claim involves money owed for federal health benefits, federal life insurance, or United States civil service retirement.

(d) A decision by the Mayor to deny a waiver of the government's claim for erroneous employee payment shall be the final administrative decision of the District government.

(e) When the government has been reimbursed for a claim for erroneous

payment in whole or in part, and a waiver of the claim is then granted, the employee or former employee shall be entitled to a refund of the amount of the reimbursement.

(f) An erroneous payment, the collection of which is waived under this subchapter, is a valid payment for all purposes.

(g) Nothing contained in this subchapter shall be construed to affect in any way the authority under any other statute to litigate, settle, compromise, or waive any claim of the government.

(Mar. 3, 1979, D.C. Law 2-139, § 2901, 25 DCR 5740; Sept. 13, 1986, D.C. Law 6-144, § 2(b), 33 DCR 4383; June 10, 1998, D.C. Law 12-124, § 101(y), 45 DCR 2464.)

Prior Codifications. — 1981 Ed., § 1-630.1.

1973 Ed., § 1-359.1.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 6-144. — For legislative history of D.C. Law 6-144, see Historical and Statutory Notes following § 1-629.02.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Delegation of Authority. — Waiver of government claims, see Mayor's Order 99-220, December 30, 1999 (47 DCR 1008).

Delegation of Authority—Waiver of District Government Claims, see Mayor's Order 2009-27, March 9, 2009 (56 DCR 6762).

Editor's notes. — Applicability of § 101(y) of D.C. Law 12-124: Section 401(c) of D.C. Law 12-124, as amended by § 60 of D.C. Law 12-264, provided that § 101(h), (l), (m), (n), (o)(2) through (5), (q), (r), (t), (u), (w), and (y) of the act shall apply as of October 21, 1998.

§ 1-629.02. Erroneous payments to employees.

When the Mayor determines that an employee or former employee of the District is indebted to the District of Columbia government ("government") because of an erroneous payment made to or on behalf of the employee, the Mayor may, after 30 days notice to the employee, collect the amount of the indebtedness as provided in this subchapter.

(Mar. 3, 1979, D.C. Law 2-139, § 2902, as added Sept. 13, 1986, D.C. Law 6-144, § 2(c), 33 DCR 4383.)

Section references. — This section is referred to in § 1-629.01.

Prior Codifications. — 1981 Ed., § 1-630.2.

Legislative history of Law 6-144. — Law 6-144 was introduced in Council and assigned Bill No. 6-177, which was referred to the Com-

mittee on Government Operations. The Bill was adopted on first and second readings on June 10, 1986 and June 24, 1986, respectively. Signed by the Mayor on July 8, 1986, it was assigned Act No. 6-186 and transmitted to both Houses of Congress for its review.

§ 1-629.03. Employee debts to District government.

(a) Whenever an employee or former employee of the District is indebted to the government for other than an erroneous payment and the debt has either been acknowledged by the employee or reduced to judgment by a court, the Mayor may, after 30 days notice to the employee, collect the amount of the indebtedness as provided in this subchapter.

(b) The Mayor shall identify all debts owed to the government by an employee or former employee that have not been acknowledged by the employee or reduced to a judgment by a court, and the names of the employees, the amount of the debt, and supporting documentation shall be forwarded to the Corporation Counsel for appropriate action.

(Mar. 3, 1979, D.C. Law 2-139, § 2903, as added Sept. 13, 1986, D.C. Law 6-144, § 2(c), 33 DCR 4383.)

Prior Codifications. — 1981 Ed., § 1-630.3. legislative history of D.C. Law 6-144, see Historical and Statutory Notes following § 1-629.02.

Legislative history of Law 6-144. — For

§ 1-629.04. Collection of debts.

(a) Any debt authorized to be collected under this subchapter may be collected in monthly installments or at officially established regular pay period intervals, by deduction in reasonable amounts from the current pay of the employee.

(b) Deductions may be made from any wages, salary, compensation, remuneration for services, or other authorized pay, including, but not limited to, back pay and lump sum leave payments but not including retirement pay.

(c) The amount deducted for any period may not exceed 20% of disposable pay, except that a greater percentage may be deducted upon consent of the employee involved.

(d) If the employee's employment ends before collection of the amount of the indebtedness is completed, deductions may be made from later non-periodic government payments of any nature except retirement pay due the former employee without regard to the limit imposed by subsection (c) of this section.

(Mar. 3, 1979, D.C. Law 2-139, § 2904, as added Sept. 13, 1986, D.C. Law 6-144, § 2(c), 33 DCR 4383.)

Prior Codifications. — 1981 Ed., § 1-630.4.

Emergency legislation. — For temporary (90 day) addition of section, see § 1055 of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) addition of section,

see § 1055 of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 6-144. — For legislative history of D.C. Law 6-144, see Historical and Statutory Notes following § 1-629.02.

Subchapter XXX. Elimination of Personal Surety Bonds for District Employees.

§ 1-630.01. Policy; agency may not require bonds.

(a) No agency may require or obtain surety bonds for any employee in connection with the performance of official duties.

(b) The personal financial liability to the District government of such employees and personnel is not affected by reason of subsection (a) of this section.

(c) Whenever the following occurs: (1) It is necessary to restore or otherwise adjust the account of an accountable officer or his or her agent for any loss to the District due to the fault or negligence of that officer or agent; and (2) the head of that agency determines that the amount of the loss is uncollectable, such amount shall be charged to the appropriation of funds available for the expenses of the accountable function at the time the restoration or adjustment is made. The restoration or adjustment does not affect the personal financial liability of that officer or agent on account of the loss.

(d) The restorations and adjustments provided for by subsection (c) of this section shall be made in accordance with rules and regulations issued by the Mayor.

(Mar. 3, 1979, D.C. Law 2-139, § 3001, 25 DCR 5740.)

Prior Codifications. — 1981 Ed., § 1-631.1. legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.
1973 Ed., § 1-360.1.

Legislative history of Law 2-139. — For

Subchapter XXXI. Records Management and Privacy of Records.

§ 1-631.01. Policy; issuance of rules and regulations.

All official personnel records of the District government shall be established, maintained, and disposed of in a manner designed to ensure the greatest degree of applicant or employee privacy while providing adequate, necessary, and complete information for the District to carry out its responsibilities under this chapter. Such records shall be established, maintained, and disposed of in accordance with rules and regulations issued by the Mayor.

(Mar. 3, 1979, D.C. Law 2-139, § 3101, 25 DCR 5740.)

Section references. — This section is referred to in § 1-631.07.

Prior Codifications. — 1981 Ed., § 1-632.1. legislative history of Law 2-139, see Historical and Statutory Notes following § 1-601.01.
1973 Ed., § 1-361.1.

§ 1-631.02. Cooperation with the United States Civil Service Commission.

Because of the statutory and administrative relationships in personnel administration between the District and federal governments, and to ensure that personnel records include information of importance to both governmental jurisdictions, the rules and regulations issued by the Mayor shall, insofar as is practicable, be consistent with civil service rules and regulations governing personnel records management in the federal service.

(Mar. 3, 1979, D.C. Law 2-139, § 3102, 25 DCR 5740.)

Section references. — This section is referred to in § 1-631.08.

Prior Codifications. — 1981 Ed., § 1-632.2.
1973 Ed., § 1-361.2.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

§ 1-631.03. Disclosure of personnel information.

It is the policy of the District government to make personnel information in its possession or under its control available upon request to appropriate personnel and law-enforcement authorities, except if such disclosure would constitute an unwarranted invasion of personal privacy or is prohibited under law or rules and regulations issued pursuant thereto.

(Mar. 3, 1979, D.C. Law 2-139, § 3103, 25 DCR 5740.)

Prior Codifications. — 1981 Ed., § 1-632.3.
1973 Ed., § 1-361.3.

legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 2-139. — For

§ 1-631.04. Rules and regulations affecting disclosure.

The Mayor shall issue rules and regulations governing the disclosure of official information contained in personnel records.

(Mar. 3, 1979, D.C. Law 2-139, § 3104, 25 DCR 5740.)

Prior Codifications. — 1981 Ed., § 1-632.4.
1973 Ed., § 1-361.4.

legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 2-139. — For

§ 1-631.05. Employee access to official personnel record.

(a)(1) The official personnel record of a District employee shall be disclosed to the employee or any representative of his or her choice. All such disclosure shall be made in the presence of a representative of the agency having custody of the records.

(2) The following information which may be in an official personnel record shall not be disclosed to any employee:

(A) Information which has been received on a confidential basis from a person under an agreement that the identity of the source of the information will not be disclosed: Provided, however, that such information may be disclosed if all information identifying the source of the information is deleted in such a manner to positively preclude identity of the source;

(B) Medical information, which, in the judgment of the employee's physician would be injurious to the health of the employee, if disclosed;

(C) Criminal investigative reports;

(D) Suitability inquiries and confidential questionnaires undertaken in accordance with rights afforded under this chapter; and

(E) Test and examination materials which may continue to be used for

selection and promotion purposes: Provided, however, that the description of test and general results thereof shall be disclosed.

(b) Each employee shall have the right to present information immediately germane to any information contained in his or her official personnel record and seek to have irrelevant, immaterial, or untimely information removed from the record.

(c) For the purpose of this subchapter, information other than a record of official personnel action is untimely if it concerns an event more than 3 years in the past upon which an action adverse to an employee may be based. Immaterial, irrelevant, or untimely information shall be removed from the official record upon the finding by the agency head that the information is of such a nature. Prior to the removal of any information in the file, the employer shall notify the employee and give him or her an opportunity to be heard.

(Mar. 3, 1979, D.C. Law 2-139, § 3105, 25 DCR 5740.)

Prior Codifications. — 1981 Ed., § 1-632.5. legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.
1973 Ed., § 1-361.5.

Legislative history of Law 2-139. — For

§ 1-631.06. Appeals. [Repealed].

Repealed.

(Mar. 3, 1979, D.C. Law 2-139, § 3106, 25 DCR 5740; June 10, 1998, D.C. Law 12-124, § 101(z), 45 DCR 2464.)

Prior Codifications. — 1981 Ed., § 1-632.6. legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.
1973 Ed., § 1-361.6.

Legislative history of Law 12-124. — For

§ 1-631.07. Transfer of official personnel folders.

The system for the maintenance of the official personnel folder established under § 1-631.01 shall provide for the transfer of folders between agencies of the District government subject to this chapter when employees transfer from 1 agency to another.

(Mar. 3, 1979, D.C. Law 2-139, § 3107, 25 DCR 5740.)

Prior Codifications. — 1981 Ed., § 1-632.7. legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.
1973 Ed., § 1-361.7.

Legislative history of Law 2-139. — For

§ 1-631.08. Exchange of official personnel information.

The Mayor, pursuant to the provisions of §§ 1-628.01 and 1-631.02, shall enter into an agreement with the United States Civil Service Commission for the exchange of official personnel information, to the extent mutually agreed

upon, between the District and federal government in accordance with limitations imposed by this subchapter.

(Mar. 3, 1979, D.C. Law 2-139, § 3108, 25 DCR 5740.)

Prior Codifications. — 1981 Ed., § 1-632.8. legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

1973 Ed., § 1-361.8.

Legislative history of Law 2-139. — For

Subchapter XXXII. Implementation; Conforming Amendments and Repealers; Specific Retention of Laws and Authorities; Rules of Construction.

§ 1-632.01. Continuation of personnel rules and regulations.

(a) All personnel rules and regulations, issued under appropriate authority on or before the date that this section becomes effective as provided in subsection (b) of § 1-636.02, shall continue in full force and effect until superseded by a provision of this chapter. All administrative directives of whatever name issued by any personnel authority or the Chiefs of the Metropolitan Police Department or the District of Columbia Fire Department in effect on the date that this section becomes effective as provided in subsection (b) of § 1-636.02 shall remain in effect until superseded by a provision of this chapter. Such existing rules and regulations may be amended in accordance with existing provisions of law.

(b) Persons employed by the District of Columbia government after March 3, 1979, shall be appointed under existing authority until the provisions of this chapter become effective.

(Mar. 3, 1979, D.C. Law 2-139, § 3201, 25 DCR 5740.)

Section references. — This section is referred to in § 1-636.02.

Prior Codifications. — 1981 Ed., § 1-633.1.

1973 Ed., § 1-362.1.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

CASE NOTES

In general.

Tenured faculty union and public university, as parties to collective bargaining agreement (CBA), continued to act as if they were performing under CBA, and thus material terms of CBA survived, were binding, and governed reduction in force (RIF), even though CBA had expired, where there was no indication that either university or union had contrary intention, and settlement agreement in prior action brought by union in response to previous RIF, showed that both parties were adhering to RIF provisions of expired CBA. *Hahn v. Univ. of the*

Dist. of Columbia, 789 A.2d 1252, 2002 D.C. App. LEXIS 7 (2002).

Collective bargaining agreement which gave the management the right to “retain” employees and to “discharge” nonprobationary employees “for cause” and which specifically retained management rights as of the time the agreement was signed, did not give probationary employees the right to arbitrate disputes governing their termination, where the regulations in effect when the agreement was signed provided for termination of a probationary employee during the probationary period with

written notice, and no clause in the agreement specifically abridged these regulations. D.C. Code 1981, §§ 1-617.1(b), 1-633.1(a). American

Federation of Government Employees, Local 3721 v. District of Columbia, 563 A.2d 361, 1989 D.C. App. LEXIS 173 (1989).

§ 1-632.02. Specific supersession of existing laws and agreements.

(a) The following provisions of Title 5 of the United States Code are superseded for all employees of the District of Columbia Government:

(1) *General regulations authority.* — Provisions of:

(A) 5 U.S.C. § 1302(b) and (c) (relating to the development of regulations affecting employees of the District of Columbia); and

(B) 5 U.S.C. § 1304(a)(3) (relating to loyalty investigations affecting employees of the District of Columbia);

(2) *General provisions of law relating to employees.* — (A) 5 U.S.C. § 2102(a)(3) (relating to employees of the District of Columbia in the competitive service);

(B) 5 U.S.C. § 2108(3)(E) (relating to certain preferences to veterans for employment with the District of Columbia government); and

(C) 5 U.S.C. § 2905(a) (relating to renewal of oaths by employees of the District government);

(3) *Employment and retention.* — (A) 5 U.S.C. § 3101 (relating to general employment authority of the District of Columbia government);

(B) 5 U.S.C. § 3102(b)(1)(C) and (b)(2) (relating to the employment of readers for blind employees of the District of Columbia government);

(C) 5 U.S.C. § 3108 (relating to the employment of detective agencies by the District of Columbia government);

(D) 5 U.S.C. § 3110(b) (relating to the employment of relatives of incumbents by the District of Columbia government);

(E) 5 U.S.C. §§ 3315(a) and 3316 (relating to the employment of preference eligibles by the District of Columbia government);

(F) 5 U.S.C. § 3320 (relating to the District of Columbia government excepted service);

(G) 5 U.S.C. § 3323(a) (relating to automatic separations and the re-employment of annuitants by the District of Columbia government);

(H) 5 U.S.C. § 3333(a) and (b) (relating to loyalty of and striking against the government by employees of the District of Columbia government);

(I) 5 U.S.C. §§ 3351 and 3363 (relating to transfers and promotion of employees of the District of Columbia government);

(J) 5 U.S.C. § 3504 (relating to retention of preference eligible employees of the District of Columbia government); and

(K) 5 U.S.C. § 3551 [repealed] (relating to restoration of positions after active or duty training by employees of the District of Columbia government);

(4) *Employee performance.* — (A) 5 U.S.C. §§ 4101(1)(F) and (3), 4301(1)(F) and (2)(D) (relating to training and performance and ratings of employees of the District of Columbia government); and

(B) 5 U.S.C. § 4501(1)(G), (2)(B) and (3) (relating to incentive awards for employees of the District of Columbia government);

(5) *Pay and allowances.* — (A) 5 U.S.C. § 5102(a)(1)(G) (relating to the classification of employees of the District of Columbia government);

(B) 5 U.S.C. § 5307(a)(1) (relating to the fixing of pay by administrative action for certain employees of the District of Columbia government);

(C) 5 U.S.C. § 5337(a)(2) [repealed] (relating to pay savings provisions for certain general schedule employees of the District of Columbia government);

(D) 5 U.S.C. § 5344(b) (relating to the effective date of wage increases for certain employees of the District of Columbia government);

(E) 5 U.S.C. § 5349(a) (relating to employees in recognized trades and crafts employed by the District of Columbia government);

(F) 5 U.S.C. §§ 5351(1), 5352 and 5353 (relating to student employees employed by the District of Columbia government);

(G) 5 U.S.C. §§ 5504(a)(3), (b)(3)(D), 5506, 5508, 5515, 5521(1)(E), (3)(B), 5522(c), 5523(a)(1)(B), (c), 5527(b), 5531(2), 5532 [repealed], 5534, 5534a, 5537(a)(2), 5541(1)(G), (2)(B), (2)(C)(ii), (iii), (iv), 5546(b), 5551(a), 5552, 5581(1)(B), (2), 5583(b)(1), 5595(1)(D), (d), (f) and 5596(a)(5) (relating to pay administration for employees of the District of Columbia government);

(H) 5 U.S.C. §§ 5701(1)(E), (5) and 5721(1)(H) and (4) (relating to travel, transportation, and subsistence allowances for employees of the District of Columbia government); and

(I) 5 U.S.C. §§ 5901(a), 5945 and 5946(1) (relating to certain allowances for employees of the District of Columbia government);

(6) *Leave.* — 5 U.S.C. §§ 6101(a)(1), (a)(2), (a)(3), (a)(4), 6103(c), 6104, 6301(2)(B), 6306(a), 6307(a), (c), 6308, 6322(a), (b), 6323, 6324(a), (b)(1), and 6326(a) (relating to attendance and leave provisions for employees of the District of Columbia government);

(7) *Loyalty, striking and civil disorders.* — 5 U.S.C. §§ 7311, 7313(a), and 7351 (relating to loyalty, striking and participation in civil disorders by employees of the District of Columbia government and rendering gifts to supervisors);

(8) *Adverse actions.* — 5 U.S.C. § 7511(1) (relating to adverse actions affecting certain employees of the District of Columbia government);

(9) *Safety programs.* — 5 U.S.C. § 7902(a)(2) (relating to safety programs for employees of the District of Columbia government); and

(10) *Compensation for work injuries.* — 5 U.S.C. §§ 8101(1)(D) and 8139 (relating to workmen's compensation claims for employees of the District of Columbia government).

(b) Notwithstanding the provisions of this subchapter or Title 5 of the United States Code, the Mayor is authorized to establish rates of pay for employees in the Career, Excepted and Executive Services of the District of Columbia government. Such rates of pay shall be established in accordance with the provisions of subchapter XI of this chapter.

(Mar. 3, 1979, D.C. Law 2-139, § 3202, 25 DCR 5740; Aug. 1, 1979, D.C. Law 3-14, § 2(d), 25 DCR 10565; Sept. 26, 1980, D.C. Law 3-109, § 2, 27 DCR 3785; Oct. 5, 1985, D.C. Law 6-43, § 2(b), 32 DCR 4484; Apr. 30, 1988, D.C. Law 7-104, § 36(d), 35 DCR 147.)

Section references. — This section is referred to in § 1-636.02.

Prior Codifications. — 1981 Ed., § 1-633.2.

1973 Ed., § 1-362.2.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 3-14. — For legislative history of D.C. Law 3-14, see Historical and Statutory Notes following § 1-608.01.

Legislative history of Law 3-109. — For legislative history of D.C. Law 3-109, see Historical and Statutory Notes following § 1-616.01.

Legislative history of Law 6-43. — For legislative history of D.C. Law 6-43, see Historical and Statutory Notes following § 1-611.03.

Legislative history of Law 7-104. — For legislative history of D.C. Law 7-104, see Historical and Statutory Notes following § 1-604.08.

References in text. — 5 U.S.C. § 3551, cited in (a)(3)(K), was repealed by the Act of Oct. 13, 1994, P.L. 103-353, § 2(b)(2)(B), 108 Stat. 3169.

5 U.S.C. § 4301(1)(F), cited in subsection (a)(4)(A), does not exist.

5 U.S.C. § 5102(1)(G), referred to in (a)(5)(A), is now 5 U.S.C. § 5102(1)(F).

5 U.S.C. § 4301(2)(D), cited in subsection (a)(4)(A), makes no reference to the District of Columbia.

5 U.S.C. § 5307(a)(1), referred to in (a)(5)(B) is now found at 5 U.S.C. § 5306.

5 U.S.C. § 5337(a)(2), referred to in subsection (a)(5)(C), was repealed by § 801(a)(2) of the Act of October 13, 1978, Pub. L. 95-454, 92 Stat. 221.

5 U.S.C. § 5523(a)(1)(B), referenced in (a)(5)(G), no longer exists in light of the amendment to that section by the Act of Oct. 28, 1991, P.L. 102-138, § 147(a), 105 Stat. 669.

CASE NOTES

In general.

Despite District of Columbia's enactment of Comprehensive Merit Protection Act (CMPA) for District employees, the federal Back Pay Act of 1966 continues to apply to District employees under the broader CMPA policies of maintaining all concrete personnel entitlements or benefits or their equivalents for employees hired before enactment of CMPA, and of maintaining pre-CMPA compensation system for all employees whenever hired until a new one is enacted to replace it. *AFGE v. D.C. Water & Sewer Auth.*, 942 A.2d 1108, 2007 D.C. App. LEXIS 650 (2007).

Federal statute on appointment of ALJs was not personnel legislation relating to District of Columbia government, and thus protections of federal statute did not apply to employee who was former chief ALJ for District of Columbia

Department of Consumer and Regulatory Affairs (DCRA), and who sought to have nondisciplinary termination of her tenure set aside; reason that federal statute was not identified by District statute as having been superseded by District's Comprehensive Merit Personnel Act (CMPA) was that federal statute did not apply to District employees. *Newsome v. District of Columbia*, 859 A.2d 630, 2004 D.C. App. LEXIS 453 (2004).

District of Columbia police officers and fire fighters were exempted from Federal Employees Compensation Act to prevent double recoveries; there was never an intention to preclude recovery for medical care and compensation. 5 U.S.C. §§ 8101 et seq., 8101(1)(E)(iv); D.C. Code 1973, §§ 4-525, 4-538; D.C. Code 1981, § 4-633. *Brown v. Jefferson*, 451 A.2d 74, 1982 D.C. App. LEXIS 443 (1982).

§ 1-632.03. Police officers and fire fighters appointed after the date this chapter becomes effective.

(a) The following provisions shall not apply to police officers and fire fighters appointed after the date that this chapter becomes effective as provided in § 1-636.02:

(1)(A) Section 5-541.01, note;

(B) Sections 5-101.02, 5-105.01(a), 5-133.03, 5-133.07, 5-123.01, 5-133.08, and 5-133.10;

(C) Sections 5-127.03, 5-105.03, 5-133.09, 5-133.10, and 5-111.01;

(D) Section 5-105.04;

(E) Section 5-105.06;

- (F) Sections 5-105.07 and 5-403;
- (G) Section 5-133.04 [repealed];
- (H) Sections 5-111.03 and 5-406;
- (I) Section 5-410;
- (J) Sections 5-131.01 through 5-131.05;
- (K) Section 5-133.12;
- (L) Sections 5-402(a), 5-404, and 5-407;
- (M) Section 5-405;
- (N) Section 5-408;
- (O) Section 5-409;
- (P) Section 5-701 et seq.;
- (Q) Sections 5-1001 through 5-1003;
- (R) Section 5-901 et seq.;
- (S) Section 5-542.01 et seq.;
- (T) Section 5-501.01;
- (U) Sections 5-521.01, 5-521.02, and 5-521.03 insofar as it affects police officers and firefighters employed by the District of Columbia;
- (V) Section 5-521.02;
- (W) Sections 5-1302 and 5-1303;
- (X) Section 5-1304 insofar as it affects police officers and firefighters employed by the District of Columbia;
- (Y) Section 5-1305;
- (Z) Sections 5-105.05, 5-127.01, and 5-133.06;
- (AA) Section 5-133.02;
- (BB) Sections 5-131.02, 5-131.03, and 5-131.04; and
- (CC) Section 5-127.02.

(2)(A) Reorganization Order 39, June 18, 1953, as amended (relating to fire trial boards); and

(B) Reorganization Order 48, June 26, 1953, as amended (relating to police trial and review boards).

(b) Notwithstanding subsections (a) or (c) of this section, no provision of law affecting the United States Park Police, United States Secret Service Uniformed Division or Secret Service shall be deemed to be affected.

(c) Notwithstanding the provisions of subsection (a)(1)(B) of this section, or of any other law or regulation, for members of the Metropolitan Police Department, the Assistant and Deputy Chiefs of Police and inspectors shall be selected from among the captains of the force and shall be returned to the rank of captain when the Mayor so determines as provided in § 5-105.01.

(Mar. 3, 1979, D.C. Law 2-139, § 3203, 25 DCR 5740; Mar. 16, 1989, D.C. Law 7-203, § 2(f), 36 DCR 450; Oct. 19, 2000, D.C. Law 13-172, § 822(b), 47 DCR 6308; Sept. 30, 2004, D.C. Law 15-194, § 104(b), 51 DCR 9406.)

Section references. — This section is referred to in §§ 1-608.01 and 1-636.02.

Prior Codifications. — 1981 Ed., § 1-633.3.

1973 Ed., § 1-362.3.

Effect of amendments. — D.C. Law 13-172 added subsec. (c).

D.C. Law 15-194, in subsec. (a), substituted

"5-105.01(a)," for "5-105.01," in subpar. (B) of par. (1), and substituted "5-402(a)," for "5-402," in subpar. (L) of par. (1).

Emergency legislation. — For temporary (90-day) amendment of section, see § 822(b) of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see § 822(b) of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 7-203. — Law 7-203 was introduced in Council and assigned Bill No. 7-44, which was referred to the Committee on Government Operations. The Bill

was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-274 and transmitted to both Houses of Congress for its review.

Legislative history of Law 13-172. — For Law 13-172, see notes following § 1-614.12.

Legislative history of Law 15-194. — For Law 15-194, see notes following § 1-604.02.

References in text. — Section 5-133.07, referenced in (1)(B), was repealed by D.C. Law 9-145, § 302(a), 39 DCR 4895, effective Sept. 10, 1992.

Editor's notes. — Application of Titles I and VI of D.C. Law 15-194: Section 1301 of D.C. Law 15-194 provided: "Titles I and VI of this act shall apply to pre-1980 employees of the Metropolitan Police Department and the Fire and Emergency Medical Services Department upon their enactment by Congress."

§ 1-632.04. [Reserved].

§ 1-632.05. [Reserved].

§ 1-632.06. Express retention of certain District of Columbia laws.

The express provisions of the following District of Columbia laws shall continue in force and are not to be considered impliedly repealed in any manner by the provisions of this chapter:

(1) The provisions of Title 18 of the United States Code insofar as they affect employees of the District of Columbia government shall not be affected by this chapter: Provided, however, that this provision shall not be construed to prohibit coverage of volunteers under the provisions of subchapter XXIII of this chapter;

(2) The provisions of § 1-319.01 et seq. shall continue in force except that volunteers shall be entitled to disability compensation as provided in subchapter XXIII of this chapter;

(3) The provisions of §§ 1-504 and 28-2701 shall continue in force;

(4) Section 1-521.01 shall continue in force;

(5) Section 2-1401.01 et seq. shall continue in force; and

(6) The Metropolitan Police Officer Civil Rights Act (D.C. Law 2-71).

(Mar. 3, 1979, D.C. Law 2-139, § 3206, 25 DCR 5740.)

Section references. — This section is referred to in § 1-636.02.

Prior Codifications. — 1981 Ed., § 1-633.4.

1973 Ed., § 1-362.4.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

§ 1-632.07. Miscellaneous provisions.

(a) Commissioner's Order No. 70-229 (Organization Order No. 25), June 19, 1970; Interim Labor Management Relations Policy for the University of the District of Columbia, May 4, 1978, 24 DCR 1004; Sections 600 through 619 of the Rules of the District of Columbia Board of Education, January 18, 1978, 24 DCR 6445-6475; the September 1975 Armory Board policy relating to labor relations; and any other labor-management relations policy inconsistent with this chapter are deemed to be superseded by this chapter: Provided, however, that nothing herein shall preclude the Mayor, the Board of Trustees of the University of the District of Columbia, the Board of Education, or the Armory Board from adopting new labor relations policies that are not inconsistent with this chapter or with regulations issued by the Public Employee Relations Board pursuant to this chapter.

(b) Any law, rule and regulation, Commissioner's Order, Mayor's Order, Mayor's Memorandum, or any administrative rule and regulation which is inconsistent with or contrary to the provisions of this chapter is repealed or superseded to the extent of such inconsistency on or after the effective date of this chapter.

(c) Any provision of the District Personnel Manual (DPM) which, while not expressly repealed or inconsistent with any provision of this chapter, lacks a statutory basis under this chapter is repealed on the effective date of this chapter.

(d) Notwithstanding any other provision of this chapter, wherever federal merit system standards are applicable to a District program financed in whole or in part by the federal funds, the Mayor shall establish rules and regulations to the extent necessary to apply such standards to personnel administration in such grant-in-aid programs and the positions and employees therein.

(Mar. 3, 1979, D.C. Law 2-139, § 3207(a)-(d), 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(hh), 27 DCR 2632.)

Section references. — This section is referred to in §§ 1-605.03 and 1-636.02.

Prior Codifications. — 1981 Ed., § 1-633.5.

1973 Ed., § 1-362.5.

Legislative history of Law 2-139. — For

legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 3-81. — For legislative history of D.C. Law 3-81, see Historical and Statutory Notes following § 1-602.02.

CASE NOTES

In general.

The authority of the Educational Institution Licensure Commission to appoint, and hence to promote, its personnel did not survive the passage of the Comprehensive Merit Personnel Act; under the Act, the mayor is the personnel

authority for the Commission. D.C. Code 1981, §§ 1-601.1(3), 1-601.2(a)(2), 1-602.1, 1-603.1(14), 1-604.6(a, b), 1-633.5(b), 31-1601 et seq., 31-1605(b). *Sims v. District of Columbia*, 531 A.2d 648, 1987 D.C. App. LEXIS 443 (1987).

§ 1-632.08. Rules of construction.

In accordance with the express terms of this chapter, the following rules of construction will apply in the interpretation of provisions in apparent conflict:

(1) Subchapter II will govern conflicting provisions; and

(2) A parenthetical limitation, upon provisions of a section or subchapter preceding it, shall limit the scope of the section or subchapter to the parenthetical provision.

(Mar. 3, 1979, D.C. Law 2-139, § 3208, 25 DCR 5740.)

Section references. — This section is referred to in § 1-636.02.

Prior Codifications. — 1981 Ed., § 1-633.6.
1973 Ed., § 1-362.6.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Subchapter XXXIII. Appropriations.

§ 1-633.01. Authorization of appropriations.

Appropriations necessary to carry out the purposes of this chapter are hereby authorized.

(Mar. 3, 1979, D.C. Law 2-139, § 3301, 25 DCR 5740.)

Prior Codifications. — 1981 Ed., § 1-634.1.
1973 Ed., § 1-363.1.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Subchapter XXXIV. Annual Report.

§ 1-634.01. Annual report. [Repealed].

Repealed.

(June 10, 1998, D.C. Law 12-124, § 101(aa), 45 DCR 2464.)

Prior Codifications. — 1981 Ed., § 1-635.1.
1973 Ed., § 1-364.1.

Legislative history of Law 12-124. — For legislative history of D.C. Law 12-124, see Historical and Statutory Notes following § 1-603.01.

Editor's notes. — Historical citations: Mar. 3, 1979, D.C. Law 2-139, § 3401, 25 DCR 5740; Feb. 24, 1987, D.C. Law 6-177, § 3(bb), 33 DCR 7241.

Subchapter XXXV. Separability.

§ 1-635.01. Separability.

Should any provision of this chapter be declared unconstitutional, invalid or beyond the statutory authority of the Council of the District, the remaining provisions of this chapter shall be unaffected by such a declaration.

(Mar. 3, 1979, D.C. Law 2-139, § 3501, 25 DCR 5740.)

Prior Codifications. — 1981 Ed., § 1-636.1. legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.
 1973 Ed., § 1-365.1.
Legislative history of Law 2-139. — For

Subchapter XXXVI. Effective Date Provisions; Implementation Task Force.

§ 1-636.01. [Reserved].

§ 1-636.02. Effective date provisions.

(a) The provisions of subchapters IX (except §§ 1-609.04, 1-609.07, and 1-690.09) and X of this chapter, subsection (a) of § 1-605.01, subsection (a) of § 1-606.01 and § 1-606.02 shall become effective 15 days after March 3, 1979.

(b) The provisions of § 1-632.01 shall become effective on March 3, 1979.

(c) The provisions of § 1-611.09 shall become effective on March 3, 1979: Provided, however, that such provisions shall only apply to the Mayor, Chairman and members of the Council taking the oath of office after January 1, 1979.

(d) The provisions of § 1-617.17 shall become effective on September 1, 1978, and shall apply to all negotiations for compensation as authorized under § 1-617.16 for compensation to be paid on and after January 1, 1980.

(e) The provisions of § 1-611.13 shall become effective on March 3, 1979, apply retroactively to compensation to be paid as provided therein after September 30, 1978, and expire on September 30, 1980: Provided, however, that if a collective bargaining agreement concerning compensation is entered into between appropriate personnel authorities (management) and recognized labor organizations for employees of the Metropolitan Police Department, the District of Columbia Fire Department, or the District of Columbia Board of Education which supersedes the provisions of § 1-611.13, such provisions shall expire on the day after the date that the agreement's terms commence.

(f) The Office of Employee Appeals and the Public Employee Relations Board shall each issue rules and regulations for the conduct of their respective business, as provided in §§ 1-604.04(f) and 1-606.02(a)(5), and §§ 1-604.04(e) and 1-605.02(11), respectively, within 180 days of their appointment.

(g) The provisions of § 1-605.02(11) shall be effective on the date following the day that the members of the Public Employee Relations Board have been appointed: Provided, however, that employees of the Public Employee Relations Board shall provide staff support to the Board of Labor Relations from the date of its taking office.

(h) The provisions of subchapters I, II, III, IV, VII, XV, XVIII, XX, XXI, XXII, XXIII, XXVI, XXVII, XXVIII, XXIX, XXX, XXXI, XXXIII, XXXIV, and XXXV of this chapter, and §§ 1-625.01 and 1-625.02 shall become effective on April 1, 1979, or on the 60th day following March 3, 1979, whichever is later.

(i) The provisions of subchapters V, VI, XVI, and XVII of this chapter and § 1-632.03(2) shall become effective 60 days after the date that rules and regulations are issued by the respective Office of Employee Appeals and the Public Employee Relations Board.

(j) The provisions of subchapters VIII, VIII-A, XI, XII, XXIII, XIV, XIX, and XXIV of this chapter shall become effective on January 1, 1980: Provided, however, that any earlier date contained within such subchapters shall be effected.

(k) The provisions of §§ 1-609.04, 1-609.07, and 1-609.09 shall become effective on January 1, 1980.

(l) The provisions of this section shall become effective on March 3, 1979.

(m) The provisions of subchapter XXXII of this chapter shall become effective as follows:

(1) Paragraphs (1), (2), (3), (4), (5), and (6) of subsection (a) of § 1-632.02 shall become effective on January 1, 1980;

(2) Paragraphs (7) and (8) of subsection (a) of § 1-632.02 shall become effective as provided in subsection (i) of this section;

(3) Paragraphs (9) and (10) of subsection (a) of § 1-632.02 shall become effective as provided in subsection (h) of this section;

(4) Section 1-632.03 shall become effective on January 1, 1980;

(5) Sections 38-101 [repealed], 38-105 [repealed], 38-802, 38-1963 note, 38-1968, 38-1202.04, 38-1202.06, and 38-1204.05 shall become effective on January 1, 1980;

(6) Sections 1-207.61, 1-333.07, 1-321.01, 1-333.09, 1-1217, 1-207.33, 1-207.52, 1-1001.04 to 1-1001.06, 1-1011.01, 1-1031.01, 1-1031.02, 1-1103.01, 2-1201.04, 2-1312, 2-1604, 2-1605, 3-1612 [repealed], 3-327 [repealed], 3-604, 3-606, 3-2903 [repealed], 3-2301.08 [repealed], 47-2886.08, 3-3616 [repealed], 4-105, 6-101.03, 6-641.13, 6-902, 6-301.13 [repealed], 7-2205, 7-503.02, 10-212, 25-104, 29-101.120, 29-301.93, 38-1304, 38-1305, 39-205, 44-708, 44-1919 [repealed], 48-902.13, 32-807, 32-1402, 39-105, 50-2201.03, 50-2608, 50-1216, 34-801, 34-804, 34-806, 42-1203 [repealed], 42-1204 [repealed], 42-1723 [repealed], 51-113, 47-113, 47-825 [repealed], 47-2409, and Organization Order No. 127 shall become effective on January 1, 1980;

(7) Sections 1-1105.01, 1-1106.01, and 1-1106.02 shall become effective as provided in subsection (a) of this section;

(8) Section 1-633.06 shall become effective on March 3, 1979;

(9) Subsection (a) of § 1-632.07 shall become effective as provided in subsection (i) of this section;

(10) Subsection (d) of § 1-632.07 shall become effective on January 1, 1980;

(11) Sections 4-838 [repealed], 4-839 [repealed], and 31-1501a [repealed] shall become effective as provided in subsection (d) of this section;

(12) Subsections (b) and (c) of § 1-632.07 shall become effective on March 1, 1980;

(13) Section 1-632.08 shall become effective on March 3, 1979; and

(14) Section 1-632.03(1) and (3) shall become effective on January 1, 1980.

(n) Notwithstanding any other subsection of this section, any personnel authority or agency vested with authority to issue rules and regulations pursuant to § 1-604.04 may issue such rules and regulations prior to the effective date of such authority.

(o) Persons performing personnel functions to be transferred to the Office of

Personnel under the authority of § 1-604.07 shall be transferred no later than 90 days after the Office is created.

(Mar. 3, 1979, D.C. Law 2-139, § 3602, 25 DCR 5740; Aug. 1, 1979, D.C. Law 3-14, § 2(d), 25 DCR 10565; Aug. 7, 1980, D.C. Law 3-81, § 2(ii), 27 DCR 2632.)

Section references. — This section is referred to in §§ 1-602.04, 1-605.03, 1-606.01, 1-623.46, 1-632.01, and 1-632.03.

Prior Codifications. — 1981 Ed., § 1-637.1.

1973 Ed., § 1-366.1.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

Legislative history of Law 3-14. — For legislative history of D.C. Law 3-14, see Historical and Statutory Notes following § 1-608.01.

Legislative history of Law 3-81. — For legislative history of D.C. Law 3-81, see Historical and Statutory Notes following § 1-602.02.

References in text. — Section 25-104, referred to in subsection (m)(6) of this section, is part of Title 25, D.C. Code, which title was amended and enacted by D.C. Law 13-298, effective May 3, 2001. For disposition of the subject matter of former Title 25, see the Disposition Table preceding § 25-101.

The effective date specified in subsection (a) of this section is calculated to be March 18, 1979.

The Public Employees Relations Board, referred to in subsection (g) of this section, was appointed on January 22, 1980, pursuant to Mayor's Order 80-11.

The effective date specified in subsection (h) of this section is calculated to be May 2, 1979.

In subsection (i) of this section, the Public Employee Relations Board issued rules and regulations on April 4, 1980 (24 DCR 1390) and the Office of Employee Appeals issued rules and regulations on October 3, 1980 (27 DCR 4347). The effective dates specified in subsection (i) are calculated to be June 2, 1980 and December 2, 1980, respectively.

Sections 31-1101 note, 31-1122 referred to in subsection (m)(5) were repealed by § 11 of D.C. Law 4-78, effective March 16, 1982.

Concerning the sections referenced to in (m)(6), § 2-212 was repealed by D.C. Law 9-84, effective March 13, 1992; § 2-327 was repealed by D.C. Law 10-152, effective August 23, 1994; §§ 2-1303 and 2-1701.8 were repealed by D.C. Law 6-99, effective March 25, 1986; § 2-327 was repealed by D.C. Law 10-152, effective August 23, 1994; § 45-1903 was repealed by § 34 of D.C. Law 4-209, effective March 10, 1983; and § 47-825 was repealed by D.C. Law 9-241, effective March 17, 1993.

"Sections 4-838, 4-839, and 31-1501a", referred to in subsection (m)(11) of this section, did not exist in the 1981 Edition at the time of the recodification into the 2001 Edition.

The sections referred to in (m)(11) were repealed by the Act of March 3, 1979, D.C. Law 2-139, § 3207(e).

Section 1-609.09, referenced in (a) and (k), was repealed by D.C. Law 12-260, effective April 20, 1999.

CASE NOTES

In general.

Mere fact that teacher was dismissed prior to effective date of Comprehensive Merit Personnel Act, which established the Office of Employee Appeals (OEA) as tribunal initially charged with hearing appeals from adverse decisions of Board of Education, did not necessarily mean that teacher's appeal would lie

directly to district court; OEA should at least have been given opportunity to hear teacher's appeal, where Board's notice of proposed adverse action was served on teacher long after effective date of Act. D.C. Code 1981, § 1-601.1 et seq. *Montgomery v. District of Columbia*, 598 A.2d 162, 1991 D.C. App. LEXIS 285 (1991).

§ 1-636.03. Implementation Task Force.

(a) There is hereby established a Task Force on the Implementation of the Merit Personnel Act (hereinafter referred to in this section as the "Task Force") which shall be composed of the following members: (1) Two members appointed by the Mayor; (2) 2 members appointed by the Greater Washington Central Labor Council; (3) 2 members appointed by the Committee on Government Operations of the Council; and (4) 1 member appointed by the Chairman of the

Council of the District of Columbia. The members shall elect 1 of their members as Chairperson.

(b) Each member of the Task Force shall receive payment of \$100 for each 8 hours actually worked per diem or \$12.50 per hour, whichever provides less, while in the service of the Task Force. The members shall also receive reimbursement for the payment of actual expenses incurred in the service of the Task Force.

(c) The Task Force shall study and review the implementation of this chapter giving special attention to the implementation timetable set forth in this subchapter. The Task Force shall advise the Mayor and the Council of the District of Columbia within 90 days of the date of their appointment under subsection (d) of this section as to the need for any adjustments in the timetables set forth in this subchapter and the Council may, by act, modify such timetables. The Task Force may engage in other activities as provided in this subsection.

(d) Members of the Task Force shall be appointed from constituencies as provided in subsection (a) of this section within 30 days of March 3, 1979. Any vacancies which occur in the membership of the Task Force shall be replaced from the same constituency represented by the member creating a vacancy. No person otherwise in the employ of the District government appointed to the Task Force may receive the per diem or hourly payment provided in subsection (b) of this section.

(e) The Task Force shall be disbanded no later than December 1, 1979.

(Mar. 3, 1979, D.C. Law 2-139, § 3603, 25 DCR 5740.)

Cross references. — Administration, procurement, authority of Retirement Board unaffected, see § 2-352.01.

District of Columbia judges, retirement, computation of retirement salary, see § 11-1564.

District of Columbia judges, retirement, "lump-sum credit for retirement" defined, see § 11-1561.

District of Columbia judges, retirement, payment of annuity to survivors, see § 11-1569.

Police and fire departments, disability retirement, use of medical resources and expertise by Boards, see § 5-710.

Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan, "Retirement Reform Act" defined, see § 1-901.02.

Prior Codifications. — 1981 Ed., § 1-637.2.

1973 Ed., § 1-366.2.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 1-601.01.

